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THE TRAVELER AND THE LOCAL STATUTE

CANON 14, § 1, 2° contains the law regarding the obligations of travelers. In this part of the canon these obligations are considered in relation to the place where the traveler is actually residing. Likewise this part of Canon 14 is the legal justification for statutes that might bind travelers. To obtain a clear idea of how far particular statutes might bind travelers it will be useful to recall the relationship between subjects and their Superior. For purposes of illustration the relationship between the Ordinary of a diocese and his subjects will be employed.

By the very fact that a Bishop is set over a diocese he becomes the legislator for that diocese. He can legislate, however, only within the limits accorded by the common law.[1] The Ordinary's jurisdiction will directly reach all who are legally bound to him by reason of their domicile or quasi-domicile.[2] All others are not the Ordinary's subjects. Therefore, in order that the Ordinary may exercise jurisdiction over these latter, this jurisdiction must be demonstrated. It is not presumed. The Code definitely, in Canon 14, § 1, 2°, states how far an Ordinary may exercise jurisdiction in this matter. This is, of course, positive legislation and could be

[1] C. 335, 1. For an extensive analysis of the relation between the local Ordinary and his subjects, consult Ryan, *Principles of Episcopal Jurisdiction* (The Catholic University of America Canon Law Studies, n. 120, Washington, D. C., 1939, pp. 79-144).

[2] C. 94.

changed either by legislative enactment[3] or altered by approved custom. But until such a change is effected, travelers, with the exceptions made in Canon 14, § 1, 2°, remain outside the jurisdiction of the local Ordinary. These exceptions are given as exceptions to a rule. It is obvious, then, that diocesan statutes as such would not bind travelers. Something decidedly more than the desire for uniformity or the mere will to bind travelers is required.

The law of Canon 14, § 1, 2° is not new. It has been the common teaching for some time.[4] It rests on an extremely rational basis. Travelers are normally allowed passage through territories not their own. They remain subjects of their own Ordinary and are in no way vagrants. While they can be expected to act decently and within the limits of general law, they form no new legal bond while traveling. Hence something extrinsic to their status as travelers must exist before they can be obligated to obey local statutes. One extrinsic item is the necessity for public order; the other is the time-honored requirement for uniformity in certain public acts. Public order is something that exists in a locality. It is something that exists for all. It is likewise something that can be disturbed by anyone, whether he be a subject of the Ordinary or a traveler. Public order is primarily founded on the security necessary for the protection of the people. It is not the same as public or common good. It is precisely here that much confusion arises. All laws are for the common good. Not all laws are for public order. It is necessary constantly to discriminate between public order and public (common) good. It is a mistake to maintain that the observance of a law by all is required for the preservation of public order. Public order is to be established and maintained by direct and specific legislation. It is an end to be sought for itself. With this in mind, a traveler can reasonably be expected to avoid any disturbance of the public order. He

[3] The Code in some special items, e. g. C. 804, § 3, directly does place non-subjects within the jurisdiction of the local Ordinary.

[4] Cf. Onclin, *De territoriali vel personali legis indole*, p. 335.

cannot reasonably be expected to contribute to the common good of the locality he is visiting.

As mentioned above, this doctrine is not new. The formula, however, through which it is expressed is comparatively recent in canon law. This might really be the cause of some confusion. Had a formula expressing the primary purpose of public order been selected, doubtless many of the laws that occasion doubts and scruples and at times real hardships could have been more clearly understood. But the formula "*ordo publicus*" is really not difficult to comprehend. A review of the doctrine of several pre-Code authors will aid toward this end. Perhaps the best and clearest statement of the common doctrine before the Code is given by Philippus de Angelis.[5] He states that travelers (*peregrini*) are not bound by particular laws unless they are made for the security of the locality. The reason for this obligation is immediately stated by De Angelis, namely, that the Superior is bound to see that the public order suffers no harm. This is a plain statement. It shows how a traveler can be brought temporarily under the jurisdiction of the local Ordinary. But this inclusion must be temporary because the primary bond of union does not exist. It is an extrinsic item that for a while supersedes a normal juridical fact. In no sense at all can a traveler be considered as yielding or adding to his normal status in another diocese to accept the same status in the locality he is visiting. He may change his domicile, but if he does he loses in this instance his status as a traveler. This is to be stressed. It is fundamental. It is established in law. It cannot lightly be set aside. All this means that a traveler's obligation to obey a particular statute is always exceptional, never a rule. And the traveler can assume the absence of such an obligation. He can normally assume his freedom to act. Restriction of his liberty to act must be demonstrated.

Franciscus Santi [6] taught a similar doctrine. He states that

[5] De Angelis, *Praelectiones Juris Canonici,* Lib. I, tit. *de constitutionibus,* 2, in tom. I, p. 55.

[6] Santi, *Praelectiones Juris Canonici,* Lib. I, *de constitutionibus,* tit. 2, n. 34, in tom. I, p. 22.

travelers (*peregrini*) are bound by laws made for the security or order of a locality. Explanation of his doctrine would follow the lines indicated above. Repetition is superfluous. With De Angelis and Santi could be cited D'Annibale, Bargilliart, and more.[7] All place the obligation of a traveler to obey a particular statute in the fact that the security of the locality visited must be maintained by all. However, De Angelis and Santi do not confuse expressions or formulae. They can, therefore, be accepted as the best guides.

There is in this matter, of course, the usual viewpoint of the theologian and the canonist. Some theologians, like Bucceroni,[8] claim that travelers are bound by laws necessary for the common good. This is a natural viewpoint of the theologian who will not stress the legal element involved. But it does not follow that the theologian is disregarding this legal element. This is shown in the examples used by theologians to illustrate their doctrine. However, it is unfortunate that the use of items is not always accurate. No theologian holds that common good is naturally the same as public order. Hence, when the theologian speaks of common good and illustrates this by examples of public order he usually means public order. It would have been better to say this in the first place. However, we can't have everything.

In discussing public order and the obligation of travelers to obey a particular statute the question of scandal must also be considered. To avoid giving scandal is an obligation of the natural law and entirely independent of positive law. It is a serious obligation to avoid hindering another's salvation. Scandal can, of course, be given by the non-observance of a law, and if scandal does result in this way it must be avoided. No question of personal convenience or relative hardship can release one from this obligation. Naturally, one would not always know whether the infraction of the law was perpetrated by a subject of the law or by a traveler. The dis-

[7] For convenience, citations from these authors and from others can be found in Onclin, *o. c.*, p. 297.

[8] Bucceroni, *Institutiones theologiae moralis*, t. I, n. 199, p. 168.

tinction between subject and non-subject is a legal distinction. It has no bearing whatever on possible harm to others.

Whenever actual scandal does arise, there is no doubt that a traveler is bound to conform to a particular statute. But this obligation in no way arises from the statute, or from the right of the local Ordinary to command. Rather the obligation arises from natural law. No one is permitted to perform or omit an act which will directly harm his neighbor. This is an obligation in natural law and Christian charity and, as mentioned above, is entirely independent of any human legislator to command or forbid.

Unfortunately, there is a great deal of loose thought about scandal. Scandal is something that must be established before it can act as an influence on future acts. Even if not actually established, it must be at least prudently foreseen. Now to say that non-observance of a law results in scandal is not always accurate. Scandal is scarcely something of everyday occurrence. People might be shocked but they are not necessarily scandalized. There is no doubt that scandal can and does exist. There is likewise no doubt that travelers must avoid it. But the point to stress is: scandal must be there or be prudently foreseen. This certainly does not happen as frequently as one might suppose. It is of little value to try to indicate beforehand in a general way that scandal will result. Too many circumstances and too many dispositions have to be considered for such an effort. Even if this could be done and scandal did not actually result the effort would be useless. The whole idea of scandal arises from the attitude of a community or any part thereof. As such, it is a variable thing and must be gauged accordingly. With this in mind, it is scarcely necessary to say that scandal can not be constantly urged as a reason why travelers should obey particular statutes. The whole matter must ultimately be left to the conscience of the traveler. He is primarily the one who is to determine whether his act or his omission of an act will actually result in scandal. He should consider the effect of his acts and thus order his life while visiting. Moreover, he

must take into account that people may not know that he is a traveler and not a resident. Hence, the people would not know that he is not obliged to obey a particular statute. If the people make no distinction, the traveler may be put to considerable inconvenience. These may be distressing circumstances, but they do not release a traveler from any obligation in natural law.

Since travelers are bound to obey particular laws regarding public order, it is necessary that they be able to identify such laws. There is no question at all of the obedience required, once such a law is established and known. Identification of laws regarding public order must be clear and definite. Doubts are not settled privately in favor of obligation to obey. As indicated above, subjection of the traveler to the local Ordinary is exceptional. Consequently doubts must privately be solved in favor of freedom. But how can laws of public order be identified? There are several ways to arrive at a conclusion in this matter.

The clearest and obviously the best method of identifying a law regarding public order is to discover the obvious purpose of the law. The local Ordinary could in a matter of this kind make abundantly clear the purpose of his legislation. However, this can scarcely be considered a strict obligation because the purpose of the law is not the law itself, nor is the purpose of the law necessarily to be included in the actual statement of the law. But the suggestion is offered with the hope of settling dispute and easing conscience. The local Ordinary could easily begin his statute with some expression that would indicate his purpose. The Code itself occasionally [9] uses this method. An expression like "*ad tuendam securitatem*," "*ad tuendum ordinem*" would immediately indicate the purpose of the statute. No statement of the process that led to the forming of such a law need be given. In fact the shorter the law is, the clearer it may be. Yet an addition of a phrase clearly indicating the law's purpose would not be amiss. Rather, its advantage would be considerable.

[9] Cf. cc. 290, 301, § 2, 343, § 1.

The foregoing paragraph presupposes suitable matter for enacting a law of public order. Suitable matter is essential. Although this is true in every law, it is highly specialized in laws of public order. A Superior is not free to label any matter public order for the sake of uniformity.[10] Nor is he free to change the character of anything even for the best purpose of eradicating abuses. There are certain items that have no conceivable relation to public order. There are other items that are clearly of public order. Statutes that exist for the sanctification of souls deal primarily with the individual and have no relation to public order. Statutes regulating private acts may bind travelers because of some required formality, but they do not concern public order. Other items, such as, prohibition of political addresses, electioneering, acceptance of public office, certainly fall within the meaning of public order. Hence salutary statutes regulating these items must be obeyed by travelers. The thing to keep in mind is that it is not the determination of the local Ordinary that necessarily constitutes public order. The local Ordinary can, of course, interpret his statute as bearing on public order. But there must be some foundation for this interpretation. This subject will be considered later. All that need be emphasized now is the necessary requirement for suitable matter before enacting a statute of public order.

Further, it must be mentioned that public order is changeable. It is not necessarily the same everywhere,[11] nor need it follow entirely the requirements of the State. While the formula means " the security of the locality ", its implications go beyond its actual meaning. The formula should be and is comprehensive enough to embrace anything that could disturb the tranquility of the locality. All this is suitable matter for a law of public order.

Frequently it happens that no statement of the purpose of a law is made in the law itself. This does not mean that it is

[10] Cf. Van Hove, *De legibus ecclesiasticis*, p. 222.

[11] Cf. Van Hove, *o. c.*, p. 222.

not a law of public order. In the absence of a phrase indicating the law's purpose, a traveler should not consider himself free immediately. It must be remembered that a law does not ordinarily state its purpose. It is given as a command. Its purpose is frequently and usually determined by an examination of its content. Travelers, then, must examine a local statute to see its purpose. A serious examination is expected. No light-hearted effort suffices. After all, travelers must remember that, in certain cases, the Code does place them within the jurisdiction of the local Ordinary. This inclusion cannot be amplified by the local Ordinary. Neither can it be restricted by the traveler himself. An honest judgment is essential. It is a pity that this obligation to examine a law is so often disregarded. Human nature is weak enough and many seek the easy way and throw all responsibility on someone else. Yet the obligation remains.

In order to discharge this obligation seriously, a traveler first must weigh the usual requirements for the enactment of a law. It is no secret that some local statutes are difficult to believe. It is also no secret that some statutes work an unreasonable hardship. A diocesan statute is not more sacred than a law of the Code. Sometimes an opinion does exist that exalts a local statute over the binding force of the entire Code of Canon Law. There is no reason to waste time disproving this opinion. To hold it would be to confess an ignorance of the fundamentals of law. Leaving aside the question of dispensation, if a cause, e. g., unreasonable hardship, would excuse from a general law, the same cause would certainly excuse from a local statute. An honest judgment, however, is required. There is little use here in reprehending false judgments. If a traveler is unwilling to accept his responsibility, there is no need to discuss his case in a canonical treatise. But travelers are to be considered as normal people, anxious to comply with their obligations.

If a traveler discovers that a local statute is reasonable, it still does not follow that he is bound to obey it. Something more is required. A traveler must discover the purpose of the

statute. This is something that is not required for obedience on the part of residents. It is sufficient for them to know the command of the Ordinary. But since travelers are bound to obey only certain local statutes, they must know which statutes claim their obedience. At the risk of repetition, it might be mentioned again that the presumption of the law is in favor of the liberty of travelers. This presumption is destroyed only by clear and unassailable contrary proof. This proof can be obtained by the examination of the content of the statute. For example: if the Ordinary forbids priests from entering a contest for public office in his diocese, there is no doubt that travelers are included. This is unquestionably public order. Again: if the Ordinary demands by law that his permission be obtained before a public address on a controversial issue can be given, travelers are certainly bound by this law. This is also of public order. Examples such as these could be multiplied.

It is not always easy to establish the point of public order. Since it can be variable, at times a more profound examination of the statute is required. Statutes that contain prohibitions to own or operate an automobile or that contain prohibitions to visit a theatre are not necessarily and, therefore, always items of public order. Such items can be matters of public order, but certainly they are not obviously such. The restrictions mentioned are usually given to correct individual abuses or to indicate unsuitable entertainment. In this way these statutes usually are made for the betterment of the individual. If this is the case, these statutes are not for public order, and consequently would not bind travelers. Here it is necessary to recall that an obligation can arise from natural law to avoid scandal. At the same time it is necessary to recall that the same obligation does not arise always from positive laws. Positive law is considered here. Undoubtedly, it is an extreme position to maintain that visiting a theatre is always an item of public order. It may be such an item at times, but normally to visit a theatre is to seek recreation or amusement. These are not items necessarily of public order.

The same judgment can largely be made in the matter of possession and operation of automobiles. To operate an automobile is, of course, to act publicly, to use the public streets, but aside from traffic regulations the operation of an automobile is hardly a necessary part of public order. It is a modern convenience which has no essential reference to public order. In both the foregoing examples the most that can be said of their suitability for enactment into statute is that local conditions may warrant prohibitions. Now local conditions that would justify a prohibitory statute would not be discernible in the very matter of the law. Inquiry among residents of a locality might reveal these conditions, and the obligation of the traveler to make this inquiry could at least hesitatingly be stipulated.

Once travelers have exercised due care to learn whether or not in specific cases they are bound by local statute the judgment of the traveler must prevail. This is before possible authentic interpretation of a statute. Let us assume that the local statute does not declare its purpose. Let us further assume an examination of the content of the statute does not reveal clearly its suitability as an enactment of public order. We emphasize the word "*clearly*". With these assumptions the judgment of the traveler must be in favor of his own freedom. This is no violation of the discipline of the locality because the traveler is fundamentally no part of it. As has been mentioned several times before, the subjection of a traveler to the jurisdiction of the local Ordinary is exceptional. This means that the traveler is not bound by a local statute unless this obligation is clearly and definitely demonstrated. The presumption of law, we repeat, is for freedom of the traveler. His subjection must be established. All this indicates that the traveler is within his rights to use his freedom. He cannot be accused justly of non-cooperation; much less can he be accused of undermining the discipline of the locality he is visiting. Nor, provided he has made an honest judgment, need he worry about the reactions of people who might consider him to be violating a law. He should, however, de-

termine that no scandal results from his action. If scandal should arise, or can be prudently foreseen, natural law will prevail.

A third method of identifying a law of public order is by authentic interpretation. The local Ordinary is the authentic interpreter of his own law.[12] He is always qualified to determine the meaning and scope of his law. As a legislator, the local Ordinary is fully competent to declare the meaning and the application of his own law. He can determine who is bound by his own law enacted within the limits of his own powers. This is fundamental doctrine and is not disputed. The only limits placed on the local Ordinary's interpretation of his own law are the same limits placed on his radical capacity to enact a law. If a local Ordinary is restricted in enacting laws to bind travelers, he is likewise restricted in his interpretations. Therefore, for an interpretation of a statute to be valid and include travelers, it must explain the purpose of the law. It cannot proceed contrary to the content of the law, nor change the actual position of facts. A new law, more extensive in scope, might possibly be needed to meet a situation not contemplated in the original statute. Such a law could be and is called an extensive interpretation, but it is really a new law and must be promulgated, etc.[13] An interpretation of this kind is not considered here.

Reason and all canonical jurisprudence acknowledge the legislator as the best qualified to settle the meaning of a law. Hence the judgment of the local Ordinary is binding. If he interprets his statute as a law of public order, his judgment prevails. The real need for an interpretation can only exist when the content of the law is neither clearly in favor of public order, nor clearly excluding public order. Until an interpretation is given, travelers can certainly favor their own freedom. Once, however, an authentic interpretation has been made in favor of public order, private judgment ceases. The authentic interpretation is to be accepted. A dispensation, of course,

[12] Cf. c. 17, § 1.

[13] Cf. c. 17, § 2.

can be obtained. Recourse to the Holy See naturally is available. The usual reasons that would excuse from the observance still have validity, but outside of these items the question is settled officially. The statute in dispute has been authentically interpreted, and travelers are obliged to obey it.

A consideration of penalties should accompany any discussion of the obligation of travelers. Opinions are not uniform in determining the extent of an Ordinary's power to punish travelers. There is no doubt that some power does exist because occasionally travelers do become subjects of the local Ordinary. Applying the principle stated in Canon 2226, § 1, travelers whenever bound by a law are subject to the punitive power of the local Ordinary. This much, at least, is admitted. There is a feeling, scarcely traceable to any defined source, that exempts travelers from any exercise of punitive power. No time need be wasted in demonstrating the absurdity of this feeling. There is nothing juridical in it. By establishing possible sanctions Canon 2226, § 1 clearly places a direct relationship between a law and its infraction by one obliged to obey it.

There are three opinions which consider the liability of travelers to punishment. The first opinion rests on Canon 2226, § 1, and it reduces the punitive power of the local Ordinary to legal minimum. The writer favors this opinion and will discuss it after considering other opinions. The second opinion, and the first to be discussed here, is attributed to Maroto.[14] This opinion holds that travelers are subject to penalties attached to diocesan statutes. This opinion is said to be supported by the doctrine of Canon 1566. If this opinion embraces a general obligation to obey all penal statutes, it is a misrepresentation of the doctrine of Canon 1566. Nowhere in this canon is a general subjection of travelers to penal statutes mentioned. All the canon says is that the culprit is to be judged in the place where he committed a crime, or if the culprit has left this place he can be cited to return. This does not mean that every non-observance of a penal

[14] Maroto, *Institutiones Juris Canonici*, tom. 1, n. 201.

statute renders one liable to punishment. Certainly, if a person is not bound by a statute, he can ignore it. Alleged, also, in favor of this opinion is the plea that if a local Ordinary could not punish a traveler, no one could, and the crime would necessarily remain unpunished. This is hardly a reasonable position, since a crime has to be committed before one need worry about who is to punish it. If the traveler is not bound by the law, and therefore does not obey the law, he commits no crime even though he acts contrary to the command of the law. It is not lack of uniformity in discipline that is to be punished. Crime is to be punished. In a word, if there is no crime, there can be no punishment.

But a word must be said for Maroto. While the opinion just discussed is attributed to him, it is doubtful whether this was really his doctrine. Maroto in the citation offered can be understood to limit a traveler's liability to infraction of laws of public order. Possibly this is what he actually meant to say but expressed his opinion inaccurately.

A third opinion considering the possible liability of travelers to punishment is offered by Michiels.[15] This opinion attempts to settle the question by distinguishing between censures and vindictive penalties. Michiels says that particular laws establishing a vindictive penalty will bind all including travelers, while particular laws establishing a censure will bind only the local residents. Michiels tries to support this opinion by citing Canon 2286. This canon says that vindictive penalties tend directly toward the expiation of a crime. Using this canon, Michiels claims that the expiation of a crime is the same thing as guarding the public order. Something can be said for this opinion, because the general idea of a vindictive penalty is to repair the social order. From this idea Michiels tries to work back to an obligation for travelers, whenever a vindictive penalty exists. In other words, whenever a vindictive penalty is established, the statute that it sanctions is a law of public order. Michiels even claims that this is by

[15] Michiels, *Normae Generales Juris Canonici,* vol. I, pp. 323-324.

the very nature of the case. On the other hand, considering the purpose of censures, Michiels excuses travelers from laws that are sanctioned by censures. Citing Canon 2241, § 1, Michiels shows that a censure is established for the purpose of correcting a culprit. This correction is then equivalent to private good. Then, since private good is directly concerned, no proof can be offered that the law is of public order. This is an ingenious explanation. It has its points.

Now, how far can a traveler be subject to penalties imposed by the local Ordinary? The first opinion, as mentioned above, rests on the doctrine of Canon 2226, § 1. It is by far the simplest solution available. It is an opinion that is entirely supported by law. It involves no ingenious reasoning. It is an opinion which can be explained in simple juridical terms.

Canon 2226, § 1 states that whoever [16] is bound by a law or a precept is liable to the penalty imposed unless expressly excused. Nowhere are travelers as such excused from possible penalties. Therefore, if bound by a particular law, a traveler is obliged to suffer the penalty if he breaks this law. There is really more to be said. The whole difficulty arises, not in the theory of penalties but, in the determination of the traveler's subjection to the local Ordinary. The traveler's liability to punishment by the local Ordinary is not greater than his actual subjection to the same Ordinary. Before a penalty can be considered, the traveler's subjection to a law must be demonstrated. When this is demonstrated, penalties will offer no real difficulty. The canon just cited states this clearly and without any equivocation. However, this is the theory of penal law. In practice, any reason that would exempt or excuse residents from penalties would likewise exempt or excuse a traveler. But even in practice there is no special exemption for travelers. Van Hove teaches this opinion.[17] He admits that the practice of civil courts is contrary to this opinion, but he holds that an ecclesiastical penal law is not

[16] "Poenae annexae legi aut praecepti obnoxius est qui lege aut praecepti tenetur, nisi expresse eximatur."

[17] Van Hove, *o. c.*, p. 223.

necessarily and always an item of public order. Van Hove further claims that a traveler cannot be bound by all particular penal laws as long as a controversy exists regarding the principal purpose of an ecclesiastical penal law. It is precisely in claiming that this controversy is settled by Canon 2286 that the opinion of Michiels should be rejected. This canon does not state the principal purpose of a penal law. It states the immediate purpose of a vindictive penalty. The root of the matter is not touched. After all, there are two classes of penalties. There must be some difference between them. This difference is indicated in Canons 2241 and 2286. These laws are not new, and if the controversy existed before the Code it still remains, as these canons do not indicate more than the immediate purpose of censures and vindictive penalties. For this reason, despite its ingenuity, the opinion of Michiels should be rejected.

To repeat: the liability of the traveler to punishment by the local Ordinary depends in law on his subjection to this Ordinary. If this subjection can be demonstrated and no reasonable excuse warrants an exemption from a penalty, the traveler is obliged to suffer the consequences of his infraction of a statute. Subjection of travelers to the local Ordinary can be demonstrated in Canon 14, § 1, 2°, and in the few instances mentioned in the Code.[18] Outside of these canons no legal relationship exists between a traveler and the local Ordinary. Therefore, if this relationship does not exist, the traveler is free (excluding scandal) to act contrary to the provisions of a local statute without fear of punishment.

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[18] E. g., c. 804, § 3. Canon 1529 can also be cited in so far as the local civil laws are adopted by the Church. However, some freedom is conceded in Canon 1251, § 1.

THE ELEMENT OF STABLE CAPITAL IN TEMPORAL ADMINISTRATION

ONE of the most frequent and most perplexing problems facing the administrators of ecclesiastical and religious temporalities in the United States is the problem of the alienation of church property. The necessary and ceaseless expansion of the external structure of our Catholic life makes familiarity with financial dealings an absolute necessity for all superiors and administrators. This naturally implies a thorough knowledge of all the various elements which enter into alienation and the other contracts which they are called upon to make. This situation is altogether different from that prevailing in countries where the Church has been well established for centuries and where the evolution of its outward manifestations of life and growth is less marked because of the state of perfection already attained. There the Church is in the happy state of possession. Long years, even centuries, of activity have enabled her to build up gradually the resources necessitated by her normal spiritual and temporal activity. As a result, her chief administrative function now is the protection of what she has already acquired.

In a country like our own the circumstances are very different. Few ecclesiastical or religious organizations in the United States can be said to have arrived at a state of definitive possession. By far the great majority of them are still painfully making their way through the difficulties attendant upon a state of acquisition. Their problem is less that of protecting what has already been acquired, than of trying actually to acquire what is necessary for normal existence and operation. The mobile, rather than static, situation of the Church's life in the United States necessarily involves more frequent financial operations than in other countries, at the same time that it calls for transactions of a different nature.

In these peculiar circumstances, perhaps there are comparatively few transactions which entail alienation in the strict sense of the term, that is, the actual *transfer* of ownership through sale, donation, exchange, etc. But in the acquisition of funds for building and other forms of expansion, innumerable occasions arise for making contracts which resemble alienation: the contracting of debts, mortgages, and the like. The prescription of Canon 1533, which extends to these last-mentioned contracts all the canonical restrictions prescribed for alienation strictly so called,[1] makes it imperative to understand clearly all the elements which canonical authors, classical as well as modern, have considered as constituting the essence of ecclesiastical alienation, or the basis of similarity with alienation.

One of these elements which is considered, it is true, but which does not seem to be sufficiently stressed by present-day authors, is that of *stable capital.* The consideration of this phase of church administration is of particular importance in view of the special conditions affecting the growth and expansion of the Church in the United States.

The Nature of Stable Capital

No well-ordered business organization considers all its assets as forming one lump sum. Careful distinction is made in financial reports between *current* funds which are received and expended in the course of daily administrative routine, and *reserve* funds which do not pertain to the resources used for normal operating expenses as mediums of barter and exchange. Even in this latter field of reserve funds a line is drawn between that portion of the reserve which is not in actual use but which is intended as a means of coping with possible emergency situations, and that other part which is completely removed from circulation and which has been laid aside as a *permanent source of regularly accruing income.* Examples of this use of reserve assets would be foundation or endowment funds.

[1] This legislation is embodied in canons 1529-1532.

The classical canonical authors recognized this distinction long before the advent of modern financial terminology. Their usual designation of these last-mentioned resources was by the name of *patrimony.* More recent technical language has transferred to this category of ecclesiastical resources the designation of *stable capital,* or merely *capital,* which is commonly in use in secular financial organizations.[2] Under this heading may be included *all those assets which are not in ordinary circulation as mediums of barter or exchange,* and which, by this very fact, constitute the permanent basis of a church body's financial security. In other words, stable capital is constituted by those assets which have been legitimately set aside *to remain intact* and *to be a source of regular income.* These assets might consist, for example,[3] of actual cash deposited at interest in a bank, of securities bearing income either in interest or in dividends, of real estate which is rented or leased, etc., as a means of procuring steady income.

The status of this stable capital has an important role to play in all administration, whether in the Church or in the business world outside. In determining the financial solidity of any organization, prudent business practise looks mainly to the security of its stable capital. This permanent background of financial soundness is, in normal contingencies, not subject to fluctuation. Hence it is a much more reliable indication of prosperity and a more efficient safeguard against

[2] "In re temporali administranda, Superiores et oeconomi sedulo distinguere debent *bona frugifera* quae sunt vel tribuuntur ut *capitale* seu *patrimonium unde Institutum reditus percipiat,* et alia bona *quae Instituto nondum sunt incorporata.* Prioris rationis bona non possunt alienari nisi secundum leges statutas de alienatione. Dum erogatio aliorum bonorum mere regitur Constitutionibus et c. 537 de largitionibus quae fiant ex bonis religionis et quae non permittuntur nisi ratione eleemosynae vel alia justa de causa."—"Quaesita Varia," n. 18,—*Periodica,* XI (1923), (157). Besides, in connection with contracts which resemble alienation, Dom Bastien (*Directoire Canonique,* n. 352) states explicitly that canonical regulations affect only those debts and other obligations *which burden the patrimony of the Institute.* In this and subsequent quotations italics are those of the present writer.

[3] A more detailed list of assets which constitute stable capital will be presented later in this study.

financial collapse than the income which accrues from daily operations. This latter income is, by its very nature, subject to notable changes in one direction or the other. That is why the Church has always manifested deep concern for the conservation, and, wherever possible, the increase of stable capital for all ecclesiastical and religious bodies.[4] This solicitude is based on the consideration that whatever belongs to the Church as a permanent acquisition should, because of its essentially religious and sacred character, remain irrevocably her property for the purpose of furthering her divine ends—unless, of course, consideration of her own welfare should dictate an opposite course in some particular instance. Her stand on the preservation of her sacred patrimony might be viewed as a paraphrase of the "Tene quod habes" of Sacred Scripture. Most of the time she has come into the possession of stable capital only after a long and trying process of development. Hence it is only meet and just that she should watch with jealous eyes and careful vigilance over what she has acquired at the cost of so much labor and suffering.

Ecclesiastical legislation, consequently, has provided many specific safeguards for the proper protection of the Church's patrimony. This concern for the safety and permanence of the Church's stable capital explains, for example, the requirement of canon 1531, § 1, to the effect that whenever alienation of a portion of stable capital has been legitimately permitted, the proceeds from the transaction are to be invested "with safety, caution, and profit for the benefit of the Church." Thus the stable capital of the ecclesiastical or religious juridical person, depleted in a greater or less degree by alienation, is redintegrated and maintains the organization in its previous state of business security and financial well-being.

[4] Recent examples of this concern may be found in the Easter Instruction of the S. Congregation of the Propagation of the Faith—*AAS*, XIV (1922), 307—as well as in question 49 of the *Elenchus Quaestionum* proposed to all religious superiors by the S. Congregation of Religious as the matter for their quinquennial report—*AAS*, XIV (1922), 281.

These considerations on the nature and function of stable capital in church organizations are evidence, at least in some degree, of the importance which attaches to a right understanding of this important point. It is the cardinal principle on which an extensive part of our canonical restrictions on alienation necessarily hinges.

The Relation of Stable Capital to Alienation

A preliminary observation of fundamental importance is that *not every transaction which involves an outlay of assets is to be considered as alienation.* The contrary assertion would be at variance with the traditional teaching of canonists. At the same time it would greatly impair the efficiency of many ecclesiastical and religious administrators. It would inevitably paralyze the organization and development of not a few church bodies, by imposing the restrictions of canons 1529-1533 even on acts of ordinary administration, whereas it is an accepted principle among canonists that the limitations called for by the Code affect *only* acts pertaining to *extraordinary* administration.[5]

Alienation, whether understood in the strict sense of canons 1529-1532, as actual transfer of ownership, or in the wider sense of canon 1533, as implying a resemblance to alienation resulting in legal jeopardy to the juristic person involved, will be verified *only when the transaction affects the stable capital of the ecclesiastical or religious organization.* On this point we have the express teaching of both ancient [6] and modern [7] canonical authors.

[5] Bastien, among others, formulates this principle categorically when he writes: "Il est à remarquer que le Code ne s'occupe que de l'administration extraordinaire."—*Directoire Canonique,* n. 334, note 2.

[6] The necessity of subtraction from stable capital as an element of alienation is stressed by Schmalzgrueber when he says that a superior who refuses a legacy harms his Institute, ". . . . non tamen patrimonium ejus diminuit, *in qua diminutione consistit alienatio.*"—Lib. III, tit. 15, n. 18. And Pirhing remarks in the same vein: ". . . . quae (i. e. alienatio) *in diminutione bonorum propriorum consistit.*"—*SS. Canonum Doctrina,* Lib. III, tit. 13, n. 4.

[7] Cf., among others, the writer in "Quaesita Varia", n. 18, in *Periodica,* XI (1923), (157); Bastien, *Directoire Canonique,* n. 352; and Vromant: "Pecunia

In addition to the argument from authority, this point can be demonstrated by considering the nature of alienation. Alienation in the strict sense of the term involves the actual transfer of ownership of property from one physical or juristic person to another; if alienation be understood in its wider signification, then it implies a contract which exposes an individual or an organization to the juridical danger of being reduced to this actual transfer of ownership. Now it is evident that before any individual or organization can actually transfer its ownership of property, or even be placed in legal danger of being obliged to do so, it must first have the full and undisputed dominion of the property in question. But nothing can be said to be under the complete ownership of the Church—in a word, to be part of her *bona propria*[8]—until ownership of it is clear and completely untrammeled by obligations. Hence the property which administrators are forbidden to alienate except within certain well-defined bounds, is that which belongs *completely* to the ecclesiastical or religious corporation, and which has been set aside as a source of regular income—that is to say, which has been duly designated as part of the juristic person's *stable capital.*

In the light of these considerations there will be no alienation strictly so called, unless the property which passes out of the Church's dominion pertains to this category of its assets. There must be diminution of patrimony, diminution of stable capital, in order to verify the essential elements of alienation in the strict sense: ". . . *in qua diminutione,*" as Schmalzgrueber says so distinctly, "*consistit alienatio*".[9] According to this same principle, alienation in the broader meaning of the term will not be verified unless the property which

numerata *quae summae capitali seu sorti stabili frugiferae legitime est adjuncta,* formalitatibus alienationis subjicitur."—*De Bonis Ecclesiae Temporalibus,* n. 281, 3, c.

[8] Cf. Pirhing, above cited in note 6.

[9] "Proinde videretur non quamlibet alienationem pecuniae stabilis, i. e., stricte collocatae esse nunc veram alienationem, sed illam tantum *quae ad aliam stabilem collocationem non ordinatur.*"—"Commentarium Codicis", *Commentarium pro Religiosis,* XIII (1932), 192.

is given in security and thus jeopardized before the civil law, forms part of the permanent assets which constitute stable capital. Any other form of property, even though pertaining to reserve assets, remains at the free disposal of the administrators, with due regard, of course, to the prescriptions of particular constitutions or by-laws.[10]

The preceding explanation demonstrates readily enough that the following categories of money or securities, or of any other form of assets, are indubitably parts of stable capital:

1) all money or securities or other assets which have been explicitly incorporated into stable capital; [11]

2) money or securities etc., which have been withdrawn from stable capital; [12]

3) money or securities etc., received from the sale of property belonging to stable capital; [13]

4) money or securities etc., received under annuity agreements; [14]

[10] "Pecunia ad modicum tempus, donec occasio utilis erogationis habeatur, deposita in argentaria vel conversa in titulos, non ideo rationem boni de quo superior libere disponat, amittit."—"Quaesita Varia", n. 18. *Periodica*, XI (1923), (158), d. And Vermeersch-Creusen (*Epitome Juris Canonici*, II, n. 845): "Bifariam autem possunt, pro adjunctis, pecuniam quae superest collocare: vel precaria ratione, *ita ut libera servetur facultas eam utiliter expendendi;* vel magis stabili ratione, *ita ut fiat capitale obnoxium normis de alienatione* bonorum ecclesiasticorum. Nobiscum De Meester, o. c., n. 1476, nota 4; Vromant, o. c., n. 204."

[11] The specific manner of this incorporation will be treated in the next section of this study.

[12] This is a clear field for the application of the laws on alienation, because the strict control of these withdrawals is the main purpose of all the canonical restrictions on alienation and similar contracts.

[13] Canon 1531, § 3, makes this clear by requiring that all such proceeds be invested safely for the welfare of the ecclesiastical corporation involved in the transaction.

[14] Vermeersch-Creusen, *Epitome*, II, n. 861. The capital of these funds is a stable source of income for the Church. It must be protected, because the principal must remain intact as long as there are interest payments to be made to the annuitant.

5) money or securities set aside by legitimate authority for the construction of buildings or the purchase of other immovable property; [15]

6) money or securities coming from bequests or pious foundations, especially if the accompanying obligations have not yet been completely acquitted.[16]

All these forms of assets pertain in one way or another to the field of stable capital. Hence any diminution of these assets through strict alienation will fall under the precise rules laid down in canons 1529-1532, while any juridical jeopardy involving all or part of the same assets through contracts which resemble alienation, will be regulated strictly by the provisions of canon 1533.

On the other hand the following categories of assets do not pertain to the field of stable capital:

1) money employed in meeting current expenses; [17]

2) money or securities borrowed *without explicit contractual obligations,* even though a nominal rate of interest be paid; [18]

[15] "Licet pecunia ex se non sit bonum immobile, vel mobile pretiosum; ut relicta tamen, et deputata ad emendum bonum immobile, debet haberi pro bono immobili; et ut relicta, et deputata ad emendum bonum mobile *Bibliotheca,* "Alienatio", n. 41. It should be noted that the use of portions pretiosum, debet haberi pro bono mobili pretioso."—Ferraris, *Prompta* of stable capital for these purposes is not regulated by the laws of alienation, because this use is tantamount to a *conversion* of stable assets from one form to another, rather than an alienation of the same. The laws on alienation would apply to these sums, however, if this money were to be used for purposes other than those first specified.

[16] So stringent is the legislation on this point that it is forbidden to alienate the capital of a bequest, even if there are on hand sufficient funds from other sources to provide for the intention of the benefactor.—*Periodica,* V (1913), (29).

[17] Vromant, *De Bonis Ecclesiae Temporalibus,* n. 281, 4.

[18] Here there is no juridical jeopardy of stable capital before the civil courts by exposure to the danger of legal measures to insure payment. Cf. Vromant, *De Bonis Ecclesiae Temporalibus,* n. 281, 4; and Larraona, "Commentarium Codicis", *Commentarium pro Religiosis,* XIII (1932), 190.—It should be noted carefully, however, that although the danger of juridical jeopardy is obviated by the fact that there are no explicit contractual obligations as-

3) proceeds from the sale of old church furnishings, when these proceeds are used to provide replacements; [19]

4) money or securities withdrawn from investments pertaining to stable capital, if the withdrawals are made for the purchase or construction of buildings which will yield income or will at least reduce operating expenses; [20]

5) funds used for the purchase or construction of buildings when the money is already available; [21]

6) funds used for constructing residences for ecclesiastics or religious, particularly if such construction will obviate the necessity of renting or leasing other buildings for this same purpose; [22]

7) funds used for the repair of buildings already constructed; [23]

8) assets changed from securities to simple bank deposits at interest; [24]

9) portions of stable capital transferred to safe investments which are at least equally lucrative; [25]

sumed, this circumstance does not in any way whatsoever affect the moral obligation of reimbursement.

[This exception seems theoretical in the United States, since the courts would undoubtedly uphold an implicit contract to repay in every such instance—Ed.]

[19] S. C. Concilii, 12 iul. 1919, *AAS* (1919), 17. The S. Congregation points out, however, that money received from such lawful sale of church furnishings cannot, without specific new authorization, be expended for the enlargement or repair of an old church or for the construction of a new church.

[20] This transaction, as is evident, changes only the *form* of part of the fixed capital, not the content. It amounts to conversion, rather than alienation. Cf. Vromant, *De Bonis Ecclesiae Temporalibus,* n. 280, 9°, c. Larraona holds this same position, in the citation given above in note 9.

[21] The reason is that this is not a case of genuine *alienation* of assets.

[22] Vermeersch, *De Religiosis Institutis et Personis,* I, n. 439. Vermeersch-Creusen, *Epitome,* II, n. 851; Vromant, *De Bonis Ecclesiae Temporalibus,* n. 280, 9, c and n. 285, c.

[23] Vermeersch-Creusen, *Epitome,* II, n. 852.

[24] Vermeersch-Creusen, *loc. cit.*

[25] Canon 1539, § 2. It would not seem rash to allow these transfers even if the income is slightly less but yet much surer than that accruing from investments which promise higher returns. As Wernz remarks: "Superior lex est

10) money given with the express intention that it be expended for specific purposes; [26]

11) money obtained by virtue of a construction or purchase-money mortgage, if the security offered is a building *to be constructed,* not something pertaining to the *actual* stable capital of the Institute; [27]

12) property bequeathed to an Institute which is incapable of owning it.[28]

conservatio bonorum ecclesiasticorum, et legitima sufficientium redituum perceptio."—*Ius Decretalium,* tom. 3, pars 1, n. 153.

[26] "De Recenti Quaestione circa Bona Ecclesiastica"—*Periodica,* XIII (1925), (14).

[27] "Similiter alienare non videtur, sed minus perfecte acquirere, qui aedificia exstruit vel emit eaque simul gravat obligatione solvendi pretium constitutum ex aere alieno, ita ut ipsa aedificia noviter empta vel exstructa hypotheca speciali graventur."—Vromant, *De Bonis Ecclesiae Temporalibus,* n. 280, § 8. Larraona states the same principle when he says: "Alienatio aestimanda non est emptio vel exstructio aedificiorum, hypotheca speciali ipsis statim imposita." His conclusion is based on a principle which he enunciates in another connexion: ". . . . alienatio necessario *supponit dominium jam adquisitum.*"—"Commentarium Codicis", *Commentarium pro Religiosis,* XIII (1932), 195. McManus (*The Administration of Temporal Goods in Religious Institutes,* p. 125, note 22) seems hesitant in accepting this conclusion, because of the fact that money already paid on this mortgage may be ultimately lost to the Church if foreclosure takes place. It is always true that there is the possibility of a deficiency judgment being entered against the church body in case of default before the full payment of the mortgage. Still money thus paid out, either as interest or as part payment on the principal, will not be governed by canons 1529-1532, nor by canon 1533, unless it is taken from the *stable capital* of the corporation. In the circumstances in which these mortgages are most generally resorted to, there is no stable capital involved; otherwise there would be no necessity of this particular type of mortgage. The principle still remains true that money taken from current resources, as would be the case here, is not subject to the regulations on alienation nor to the restrictions governing contracts resembling alienation.

[28] "Est enim communis doctorum sententia, quod lex prohibens alienationem bonorum ecclesiasticorum, non obliget quando ea bona quovis titulo acquiruntur alicui loco ecclesiastico, qui lege incapax est ad ea retinenda; tunc enim sine alia licentia, potest ea alienare, cum necessitas alienandi adsit, quae plus est quam mera licentia; nam, licet non omnis qui potest debeat alienare, omnis tamen qui debet potest, et lex obligans dat simul licentiam ad id faciendum quod jubet."—*De Lugo, Responsorum Moralium Libri VI,* Lib. III, dub. 9, n. 2; *Opera Omnia,* VIII, 129. De Lugo says that continued existence of the law forbidding a particular Institute to acquire property for

In view of the relation of stable capital to alienation, and after a careful classification of those assets which belong to stable capital and of those which do not, the following list of transactions can be drawn up, which, in the circumstances required by Canon Law, verify the notion of either alienation strictly so called or of contracts resembling alienation:

1) *sale* of property belonging to stable capital;

2) *donations* from stable capital;

3) *long-term*[29] *leases* of property belonging to stable capital;

4) *long-term rentals* of property comprised in the stable capital;

5) *exchange* of property included in stable capital—with due allowance for the faculty given in canon 1539, § 2, for the exchange of securities;

6) *compromise* in financial disputes over goods pertaining to stable capital;

7) *mortgaging by special mortgage* of goods already under the full ownership of the church organization;

8) *payment of debts* with funds taken from stable capital;

9) *surety for others* with funds belonging to permanent assets.

Aggregation of Assets to Stable Capital

It has already been pointed out that not all reserve funds are automatically incorporated into an ecclesiastical or religious organization's stable capital.[30] Hence the necessity of some norm for determining the actual content of an ecclesiastical juristic person's patrimony or fixed capital. If it be question of explicitly assigning a specific portion of assets to stable capital, there can be only one procedure possible: the

itself constitutes a perpetual order commanding the alienation of whatever it receives, and thus accords the authorization necessary to legalize such alienation. Cf. *ibidem*, n. 6.

[29] That is, for more than nine years.

[30] Cf. note 10.

authorization of the lawful superior and the consent of the interested parties.[31]

The necessity of the superior's intervention and of the consent of the interested parties is evident. As long as assets are not classified as stable capital, they remain at the free disposal of the administrators, within the limits of their particular constitutions and by-laws.[32] Consequently, since any measure which results in a restriction of this freedom of action is a matter of grave administrative moment, it can be decided upon only with full deliberation. The assignment of funds to stable capital is just such a measure, because it subjects the funds so affected to all the limitations of Canon Law on the alienation of ecclesiastical or religious property.[33]

The necessity of this full and careful deliberation, however, does not seem to exclude the possibility of *implicit* aggregation of certain assets to stable capital. Such would be the case, for instance, with reserve money belonging to a parish which is burdened with no debt and which has no immediate needs to be provided for. The simple fact that such money has been duly deposited in a bank or otherwise profitably invested, with no intention of using it for specific needs, would seem to be sufficient assignment to stable capital, even though this assignment has not been explicitly mentioned. The requirement of full deliberation would be verified in the prudent decision to deposit or invest such funds, without specific advertence to aggregation to stable capital.

These two possibilities present little or no difficulty. Unfortunately, however, particular situations will not always be so clear. At times cases may arise in which even implicit

[31] Aggregation to the stable capital of a society must be done ". . . cum Superioris auctoritate et Clericorum consensu."—Ferraris, *Prompta Bibliotheca,* "Alienatio", art. 1, n. 6. This principle is confirmed for present-day legislation by Larraona: "Haec [pecunia] *usquedum in sortem stabilem legitime redacta non fuit,* vel alicui fini, *item legitime, ad normam juris, alligata,* non subiicitur regulis alienationis."—"Commentarium Codicis", *Commentarium pro Religiosis,* XIII (1932), 191.

[32] Cf. citation from Larraona in preceding note.

[33] Cf. citations from Vromant, in note 7, and from Vermeersch-Creusen, in note 10.

aggregation to stable capital will be at least doubtful. In these instances the ultimate decision should favor the freedom of action of the superior or administrator. This conclusion harmonizes with the provisions of canon 19, which declares that laws which restrict the free exercise of rights are subject to *strict* interpretation. Hence the obligations or restrictions which they impose should not be urged unless there is a clear case in their favor.[34]

Particular Appplications of General Principles

After the preceding presentation of the general principles regulating the relation of stable capital to alienation, the following brief remarks may be appended by way of conclusion and of application to particular situations.[35]

1) With due regard to the provisions of particular constitutions etc., *donations* may be made by ecclesiastical or religious superiors or administrators if the funds or other property donated are not subtracted from the church body's stable capital.

2) The same principle as that enunciated in 1) will apply likewise to the *sale* or *exchange* of ecclesiastical property.

3) If there be question of contracting mortgage obligations, only *special* mortgages need to be considered, that is, those mortgages which confer on another a *jus in re*, or *real* right, to a specifically determined piece of church property. Even in this case, the laws on contracts resembling alienation will not apply unless the security furnished for this mortgage is already in the full possession of the Institute, and, in addition, has been incorporated into the juridical person's stable capital or patrimony.[36]

[34] "Leges quae poenam statuunt, aut liberum iurium exercitium coarctant, aut exceptionem a lege continent, strictae subsunt interpretationi."

[35] The applications which are treated here very summarily will be found developed at greater length in Heston, *The Alienation of Church Property in the United States*, Catholic University of America Press, 1941.

[36] ". . . intentionem legis ita explanat Ferraris, Bibl. Can. v. *Alienatio*, art. 4, n. 1: 'Quamvis sine solemnitatibus possit fieri alienatio rei ecclesiasticae . . . cum talia bona *nondum sunt Ecclesiae seu pio loco incorporata* . . . requiritur tamen beneplacitum Apostolicum pro tali alienatione quando bona sunt *jam*

4) The foregoing principles on the application of the laws on contracts resembling alienation to special mortgages will apply likewise, *mutatis mutandis,* to the contracting of *debts.*

5) In regard to the *renting* and *leasing* of ecclesiastical or religious property, the simultaneous concurrence of the elements of time-length and rental value will require the application of canons 1529-1532, as well as of canons 1541-1542, provided the property in question pertains to the stable capital of the lessor or rentor.

6) Ecclesiastical or religious organizations favored with surplus funds are not limited in their loans to other corporations, ecclesiastical or otherwise, unless the funds loaned are deducted from their stable capital.

These are the conclusions reached by a study of the place of stable capital in the administration of ecclesiastical and religious temporalities, and of the relationship of stable capital with the general and particular restrictions of Canon Law on the alienation of church property. These conclusions are presented in these pages, with the humble hope that they may be of assistance to ecclesiastical and religious superiors and administrators in clarifying possible difficult situations, and in thus cooperating for the more perfect observance of the prescriptions of church law on temporalities.

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Ecclesiae vel pio loco incorporata, ex Decreto S. Congr. Concilii in una *Salutiarum,* 20 sept. 1624, lib. 27 Decr. pag. 103.'"—S. C. Concilii, *Calatayeronen. Bonorum,* 25 ian. 1902.—*Thesaurus Resolutionum,* CLXI, 61. That this has been the traditional practise of the Holy See is evidenced by another decision of the S. Congregation of the Council, where it is said: "Quoad mobilia pretiosa *Ecclesiae incorporata* esse necessarium beneplacitum Apostolicum."—S. C. Conc. *Ordo S. Franc.,* 18 mart. 1719.—*Fontes,* n. 3185, and *Thesaurus Resolutionum,* I, 172. Schmalzgrueber likewise observes: "Ad bonorum autem ecclesiis non incorporatorum distractionem solemnitates non exiguntur."—Lib. III, tit. 13, n. 40. On this same principle of preserving intact the funds which have once been incorporated into the stable capital of churches and other ecclesiastical corporations, the III Plenary Council of Baltimore forbade pastors to take their salaries from the fixed capital of their parishes, even when ordinary income did not suffice to complete the salary agreed upon.—*Acta et Decreta,* n. 273.

DIRECT DISSOLUTION OF A LEGITIMATE MARRIAGE BY PAPAL AUTHORITY

A BRIEF survey is here presented of the teaching of theologians and canonists regarding the power of the Pope, independently of the Pauline Privilege, to dissolve, for a just reason, primarily *in favorem fidei*, a legitimate [1] marriage, even though it has been consummated. The majority of writers, as will be seen in the course of the article, admit this power of the Roman Pontiff, and advance their views as a matter of certainty. Some deny this power outright, while others seem to express doubts regarding it.

Following the more common view, we maintain that, when the conditions required for the application of the Pauline Privilege are wanting, a legitimate marriage, may be dissolved *in favorem fidei* by other means, namely, in virtue of the vicarious power of the Pope, provided one or both parties become converted, and provided the marriage contracted in infidelity has not been consummated after the baptism of both parties. Ayrinhac [2] declares that "it is practically certain today that, outside the Pauline Privilege in the proper sense, a non-sacramental marriage may be dissolved also under certain conditions through the vicarious power of the Roman Pontiffs."

All theologians admit that the Pope can dissolve a marriage that has been contracted in infidelity and never consummated either before or after baptism of one of the parties. All agree, too, in denying the power of the Pope to dissolve a marriage, both parties remaining in infidelity,[3] or the marriage

[1] Cf. Can. 1015, § 3.

[2] Ayrinhac, S. S., *Marriage Legislation in the New Code of Canon Law* (New York: Benziger, 1940), p. 322; cf. Burton, *A Commentary on Canon 1125*, n. 121 (The Catholic University of America Canon Law Studies, Washington, D. C., 1940), pp. 75, 76, 85-89.

[3] Cf. S. Congr. Inquisitionis, April 9, 1850.

having been again consummated after both parties have been baptized.[4]

The nub of the disputation may be briefly stated thus: can the Pope, apart from the Apostle's case, in virtue of the full extent of his power, dissolve a marriage contracted in infidelity and afterwards consummated, if by the baptism of but one party it has become a mixed marriage, regardless of whether it remains unconsummated after baptism or is again consummated?

Two opinions are advanced. A number of writers deny the power just described, saying the Pope can not dispense in such cases, because dispensations of this kind are nothing else but declarations of the divine privilege promulgated by St. Paul. Defending this view are, among others, Benedict XIV, Schmalzgrueber, Perrone, Feije, Rosset, Santi-Leitner.[5]

The positive view is upheld by the majority of modern theologians and canonists, who base their contention on the practice of the Church, to wit, on the fact that the Popes used this power and are still using it. We shall here indicate the following authors: Sanchez,[6] Tamburini,[7] Pirhing,[8] St. Al-

[4] Wernz, *Ius Decretalium,* Tom. IV, *Ius matrimoniale Ecclesiae catholicae,* (Prati, 1911-1912), n. 705; Gasparri, *Tractatus canonicus de matrimonio,* (Parisiis, 1904); De Smet, *Tractatus theologico-canonicus de sponsalibus et matrimonio,* (Brugis, 1927), n. 333.

[5] Benedictus XIV, *De Synodo diocesana,* lib. VI, c. 4, n. 3 sqq.; lib. XIII, c. 21, n. 4 sqq.; *Quaest. can.,* 241, 546; Schmalzgrueber, *Ius ecclesiasticum universum,* Lib. IV, *Sponsalia et matrimonium,* (Ingolstadii, 1716), n. 58 sqq.; Perrone, *De matrimonio christiano,* (Leodii, 1861), II, 311 sqq.; Feije, *De impedimentis et dispensationibus matrimonialibus,* (Lovanii, 1893), n. 602; Rosset, *De sacramento matrimonii,* (Parisiis, 1895), n. 639 sqq.; Santi-Leitner, *Praelectiones iuris canonici,* (Ratisbonae, 1905), Lib. IV, p. 331.

[6] *De sancto matrimonii sacramento,* (Venetiis, 1693), Lib. II, Disp. XVII, n. 2.

[7] *Opera, Lib. VIII, Tract. V, Cap. V,* # II, nn. 1, 2, 3.

[8] *Ius canonicum,* Lib. IV, *De sponsalibus et matrimonio,* (Venetiis, 1759), Tit. XIX, n. 146.

phonsus,[9] Palmieri,[10] Ballerini-Palmieri,[11] Billot,[12] Bucceroni,[13] Wernz,[14] Huarte,[15] Lehmkuhl,[16] Pesch,[17] Wernz-Vidal,[18] Vermeersch-Creusen,[19] Cappello,[20] Woods,[21] Payen,[22] Noldin,[23] Ayrinhac,[24] Burton.[25]

According to Cappello [26] the doctrine defended by the writers just enumerated, and many others, is not only more probable, but *certain,* considering all the solid arguments in its favor. The truth of this will appear from what will be said below.

The Roman Pontiffs *de facto* used this power and are still using it, i. e.,[27] the power to dissolve marriages contracted in infidelity after one of the parties has been baptized. Hence, we must necessarily deduce the right from the use. The right depends upon a fact. If the fact be certain, the right must

[9] *Theologia moralis,* Lib. VI, Tract. VI, *De matrimonio,* (Parisiis, 1862), nn. 897, 957.

[10] *Tractatus de matrimonio christiano,* (Romae, 1880), p. 221 sqq.

[11] *Opus theol. morale,* Vol. II, Tract. X, *De Sacramentis,* Sect. VIII, *De matrimonio,* (Prati, 1892), n. 705 sqq.

[12] *De Ecclesiae sacramentis,* II, (Romae, 1901), p. 399 sqq.

[13] *Theologia moralis,* II, (Romae, 1908), n. 979.

[14] *Ius Decretalium, loc. cit.*

[15] *De ordine et matrimonio,* (Romae, 1913), p. 199.

[16] *Theologia moralis,* II, (Friburgi Brisgoviae, 1914), n. 932.

[17] *Praelectiones dogmaticae,* VII, Tract. IV, Sect. III, (Friburgi Brisgoviae, 1920), nn. 795, 796.

[18] *Ius canonicum,* V, (Romae, 1928), n. 636.

[19] *Epitome juris canonici,* II, (1930), n. 434.

[20] *De sacramentis,* III, (Romae, 1933), n. 791.

[21] *Constitutions of Canon 1125,* (Milwaukee, 1935), p. 18 sqq.

[22] *De matrimonio,* III, (Zi-ka-wei, 1936), n. 2446 sqq.

[23] *Summa theologiae moralis,* III, (Oeniponte Lipsiae, 1938), n. 525.

[24] *Marriage Legislation,* (New York, 1940), p. 322.

[25] *Loc. cit.*

[26] *Loc. cit.*

[27] Burton, *op. cit.,* p. 86.

also be certain. The fact can not be denied, for certain dispensations granted by the Holy See are not mere declarations or comprehensive interpretations of the Pauline Privilege, but extensive interpretations of the same privilege, i. e., extended to cases not comprehended under the privilege, or, in other words, they are implicit dissolutions of a marriage contracted in infidelity.[28]

An extensive interpretation, which amounts to a real law, and applies to a case not comprehended under the original law, necessarily presupposes legislative power as to that case, v. g., of dispensing or relaxing the bond, as occurs when there is question of a dissolution of a *matrimonium ratum*.[29]

That the Popes, in the absence of conditions required for the application of the Pauline Privilege, dissolved legitimate marriages is evidenced by the Constitutions of Paul III,[30] St. Pius V,[31] and Gregory XIII.[32]

These Constitutions, though issued for particular regions, were extended to other countries in similar conditions in virtue of can. 1125.[33]

Paul III's Constitution refers to the West Indies, and is applicable to polygamous unions. The exact wording of his declaration reads as follows: "Hoc observandum, ut qui ante conversionem plures, juxta eorum mores, habebant uxores, et non recordantur quam primo acceperint, conversi ad fidem, unam ex illis accipiant, quam voluerint, ut cum ea matrimonium contrahant per verba de praesenti, ut moris est; qui vero recordantur quam primo acceperint, aliis dimissis, eam retineant." In virtue of this decree, nothing is conceded to

[28] Cappello, *loc. cit.*

[29] Can. 1119.

[30] "*Altitudo,*" June 1, 1537—Document VI, *Codex Iuris Canonici* (*in fine*).

[31] "*Romani Pontifices,*" August 2, 1571—Document VII, *Codex Iuris Canonici* (*in fine*).

[32] "*Populis,*" January 25, 1585—Document VIII, *Codex Iuris Canonici* (*in fine*).

[33] For interpretation of the phrase "in similar conditions" cf., v. g., Woods, *The Constitutions of Canon 1125,* (Milwaukee, 1935), pp. 73-82; Burton, *op. cit.,* pp. 113-116.

those who were polygamists before their baptism, if they knew which of their several wives they had taken first.[34] However, if the first marriage be positively doubtful, or, in other words, probably null, the polygamists in question may, in accordance with the Constitution and now with canon 1127, either marry any one of the other wives, or any other woman, provided the latter receives baptism in the Catholic Church.

The favor extended by Paul III consists precisely in this. Polygamists, who before baptism had several wives, "and do not recall which they had taken first, may after receiving baptism keep the one they prefer," and, probably, even if the latter refuses to be converted, for neither the words of the Constitution nor commentators require that the woman chosen by a polygamist from among his former wives receive baptism.[35]

The case dealt with in Pius V's Constitution also differs from the Apostolic Privilege. The Indians of the New World were permitted "motu proprio et ex certa scientia Nostra, ac *Apostolicae potestatis plenitudine* . . . ut . . . baptizati, et in futurum baptizandi, *cum uxore, quae cum ipsis fuerit baptizata et baptizabitur,* remanere valeant, tanquam cum uxore legitima, aliis dimissis . . ."[36]

In this Constitution we have two concessions, one certain, the other probable. It is certain that a polygamist is allowed to interpellate the woman whom he has first chosen as his legitimate wife, concerning her intention to embrace Christianity. In case of refusal, he may marry any of the other wives provided she desires to be converted. On the other hand, since Pius V is silent about making any interpellation, some writers think that he allows polygamists to choose from among their wives the one who wishes to receive baptism, without first interrogating the legitimate wife about her in-

[34] According to the Constitution of Paul III, the pagan first wife had to be retained if she were known; cf. Burton, *op. cit.*, p. 40.

[35] Cf. Vermeersch-Creusen, *Epitome juris canonici,* II, n. 436; Vromant, *De matrimonio,* (Lovanii: Museum Lessianum, 1931), n. 356.

[36] Italics inserted.

tention. At least this seems to be the obvious sense of the words. Vidal [37] seems to hold the same view: "Cum ergo illa indulta transierint in jus commune Codicis, habemus ex jure communi Codicis, in duplici casu Const. Pauli III, et Pii V, sublatam necessitatem interpellationis . . ." Vermeersch-Creusen [38] adhering to this view, distinguishes between three hypotheses: if it is utterly impossible or very difficult to learn of the whereabouts of the first wife, the neophyte is certainly excused from making any interpellation; secondly, if the first wife can be easily found, it is certainly quite sufficient to interrogate her whether she desires baptism; and lastly, even if the interpellation can be made very easily, the neophyte need not interpellate, provided he intends to retain the wife with whom he is living, and who wishes to be converted. This last case is rejected by Vromant,[39] for says he, "si . . facile reperitur conjux, versamur *extra ambitum* Constitutionis Pii V." Wouters [40] referring to the interpellation of the first wife, if her whereabouts is certainly known, writes: "textus Pii V illud quidem non expresse edicit . . ."

We perceive, then, that in these two cases of Paul III and Pius V, there is no question of a mere dispensation from interpellations. The Roman Pontiffs in virtue of their supreme authority intend to dissolve the marriages specified in these Constitutions.

If interpellations be prescribed *"lege divina"* as some writers maintain, a marriage contracted in infidelity remains naturally indissoluble, as long as the interpellations have not been made, or, speaking objectively, if the infidel party agrees to live peacefully with the convert. We must conclude, therefore, that if a marriage is dissolved, even though the unbaptized person desires to cohabit peacefully with the one bap-

[37] Wernz-Vidal, *op. cit.*, n. 633.

[38] *Epitome juris canonici,* II, n. 436, 2.

[39] *De matrimonio,* n. 358, 3. Italics inserted.

[40] *Theologia moralis,* II, n. 725, 5.

tized, the dissolution can not proceed from the Pauline Privilege, but from the power of the Pope.[41]

The concession of Gregory XIII is quite different, although the source of the power employed there is identically the same. A new favor was extended by Gregory XIII to married pagans of Angola, Ethiopia, Brazil, and other parts of the West Indies, who were taken prisoner and transferred to distant lands. According to this pontifical indult, if either the party who remained at home or the one in a distant country became converted, and the other could not be reached for the necessary interpellations, the required dispensation could be granted by all Ordinaries and pastors in those territories, and all the priests of the Society of Jesus, who had faculties to hear confession there. Moreover, in virtue of the dispensation the convert without interpellating the party whom he married before conversion, or without awaiting any reply, could marry again with any baptized person, provided it be certain that the party in question can not be interpellated summarily and extrajudicially, or, if this be not certain and the inquiry having been made, no answer had appeared within the time established. Such marriages would be valid even if it were learned later on that the party was hindered from making the necessary reply, or even received baptism before the second marriage had taken place.

It is quite evident, then, that even a marriage which had become *ratum* by the baptism of both parties could be dissolved, and that in virtue of papal authority.

Consequently, there is no other alternative but to admit that the three papal Constitutions just discussed are no applications of the Pauline Privilege, but rather, that they imply the employment of a special power, the vicarious power of the Pope, contained in the Apostolic powers of the keys. Because interpellations are not resorted to, especially when there is question of unbaptized persons whose intention is unknown, it appears very clearly that the Pontiff exercises special power.[42]

[41] Pesch., *op. cit.*, nn. 795, 796.

[42] Burton, *op. cit.*, pp. 88-90.

The very expressions used by the Popes confirm this position. Pius V employs the words " apostolicae potestatis plenitudine." Gregory XIII derives the reasons for dispensing from interpellations because of the impossibility of making them from the following facts. First, a legitimate marriage is less firm than a *matrimonium ratum;* and secondly, whenever just causes demand it, that very lack of firmness permits the dissolution of them, for to quote the Pope's exact words, " hujusmodi connubia, inter infideles contracta, vera quidem, non tamen adeo rata censeri, ut necessitate suadente dissolvi non possunt." [43]

This power of the Roman Pontiffs to dissolve " *in favorem fidei* " a marriage contracted by infidels may be deduced also from the text of I Cor. VII, 12 sqq. According to the context it appears that the privilege promulgated by St. Paul was issued in virtue of his Apostolic authority rather than given immediately by God and *merely* promulgated by the Apostle. The words of verse 12: " Nam ceteris ego dico, non Dominus," are referred by early commentators, for example, St. Augustine, Theophylactus, St. Jerome, etc., and by modern interpreters, to what follows (i. e., the words containing the privilege extended by St. Paul); so also verse 15: " Quodsi infidelis discedit, discedat, etc." seem to apply to all that the Apostle says on his own authority. Consequently, if this faculty of marrying a second time because of the departure of the infidel party is given by Apostolic authority, there is no reason, why the Pope, for a similar reason, in virtue of the plenitude of Apostolic authority, can not do the same. Gasparri [44] referring to this pontifical power, says: " Misericors Deus hanc potestatem (dissolvendi scilicet matrimonium in infidelitate initum) dedit, in favorem fidei et propter salutem animarum, *suae ecclesiae,* id est modo ordinario suo in terris Vicario, et modo extraordinario aliis Apostolis."

[43] Cf. Burton, *op. cit.*, pp. 83-85.

[44] *Tractatus Canonicus de Matrimonio,* (ed. nova ad mentem Codicis I. C., Romae: Typis Polyglottis Vaticanis, 1932), II, n. 1166. Italics inserted.

The greater number of writers mentioned above in favor of the affirmative view (v. gr., Sanchez, St. Alphonsus, Pirhing, Lehmkuhl, Ballerini-Palmieri, Wernz, Billot) extend this same power of the Pope to a marriage contracted in infidelity and consummated, and which, after the baptism of both parties, is not consummated again (*matrimonium ratum*). In this case the marriage is *non ratum et consummatum* in infidelity, and *ratum* after the baptism of both parties. Though absolute indissolubility is attached to a *matrimonium ratum et consummatum,* the marriage in question may be dissolved. A marriage of this kind, then, in as far as it is subject to the power of the Church, i. e., *after* the baptism of both parties, is equally subject to the dissolving power of the Pope.[45]

Moreover, this power of the Pope may also be applied to a marriage contracted validly and that without any dispensation between a baptized person and one not baptized, even though it be consummated. We say "without dispensation," because according to Canon 1070, § 1, the impediment of disparity of worship is not present, if one baptized *outside the Catholic Church* marries an infidel.

Indeed, a marriage becomes absolutely indissoluble, when two conditions are verified simultaneously: (a) that the marriage possess the sacramental character, and (b) that it be consummated. However, the first condition is not realized in a marriage between a baptized and an unbaptized person, because such marriage is not a sacrament according to the more common and more probable opinion.[46]

Besides, this view is implicitly confirmed by the Code of Canon Law. Canon 1118 states clearly that a valid marriage, which has been ratified and consummated, can not be dissolved by any human authority or for any cause except death. Now, in accordance with Canon 1015, § 1, in the juridical parlance of the Code, only a valid marriage between baptized persons

[45] Wernz, *op. cit.*, n. 699; Billot, *op. cit.*, II, 401; Cappello, *op. cit.*, III, n. 792, 2.

[46] Pirhing, *op. cit.*, Lib. IV, Tit. L, n. 71; Wernz-Vidal, *op. cit.*, IV, n. 44; Billot, *op. cit.*, II, 351 sqq.; Cappello, *op. cit.*, III, n. 792, 3.

is known as *ratum*. Hence, if only one of the parties to the marriage is baptized, the marriage is not ratified in the strict or canonical sense, and therefore canon 1118 can not be applied.

Marriages between baptized and unbaptized persons have been actually dissolved by the authority of the Pope. A reply was issued by the Sacred Congregation of the Holy Office, November 5, 1924, to the Bishop of Helena, Montana, who proposed the following case for settlement. In 1919 a marriage was contracted between G. G. M., an unbaptized man, and F. E. G., a woman baptized in the Anglican Church. G. G. M., wishing to embrace the Catholic faith and marry a Catholic woman, obtained a civil divorce. The Sacred Congregation of the Holy Office replied "that the Holy Father should be consulted for the favor of the dissolution" of the natural bond of the first marriage contracted by G. G. M. with F. E. G.—His Holiness, Pius XI, deigned to grant the favor asked.[47]

A similar response was given by the same Sacred Congregation on July 10, 1924. George, baptized by heretics, entered the marital state with an infidel woman, who, after abandoning him, married an unbaptized person. George, after becoming a Catholic, directed the usual interpellations to his first wife, and then married a Catholic woman. The question was asked whether the second marriage was valid. His Holiness, Pius XI, granted a dispensation from the marriage contracted with the infidel woman, in order that the husband, upon his renewal of consent *ad cautelam*, might marry validly with the Catholic woman, with whom he was still cohabiting.[48]

Beyond the shadow of a doubt, then, the Roman Pontiff can dissolve a marriage validly contracted without a dispensation between a person baptized in a non-Catholic denomination and one not baptized, even though the marriage be consummated.

[47] Cf. *Ecclesiastical Review*, LXXII (1925), 188.

[48] Cf. Bouscaren, *Canon Law Digest*, (Milwaukee: Bruce, 1934), pp. 552, 553.

Moreover, we may ask, if a marriage is validly contracted between an unbaptized person and one baptized in the Catholic Church with a dispensation from the impediment of disparity of worship, can the Pope dissolve such marriage, although it has been consummated? Most assuredly he can do so.[49] Indeed, the dispensation granted by the Church from the impediment of disparity of worship does not change the nature of the marriage. The bond which arises is the same whether the marriage be contracted with or without the required dispensation. Of course, the bond will be perpetual, but *legitimate* merely or natural. Hence, if the Pope is able to dissolve a marriage contracted without dispensation between a baptized person and one not baptized, no solid reason can be advanced why he can not do so when a dispensation from the impediment of disparity of worship has been obtained.[50]

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[49] Cappello (*op. cit.*, III, n. 792, 4, in footnote n. 12) cites Gasparri, (*Catechismus catholicus,* ad quaest. 493) as holding this view. Gasparri, however, refers to a marriage which has not been consummated.

[50] Cappello, *loc. cit.*

BINATION ACCORDING TO CANON 806, § 1— A CASE OF NECESSITY OR A PRIVILEGE OF CONVENIENCE?

BINATION on Sundays and holydays of obligation has become now a universal practice in nearly all our Catholic churches in the United States. There is scarcely now a church in larger cities where one or the other or even two priests affiliated with a church would not have to binate in order the fill the schedule of the announced Masses for the benefit of the people who belong to this particular church or who, for one or the other reason, make it their practice to assist at holy Mass of obligation rather in this church than in their own parish church. In fact, there is now a movement in vogue in most of the larger cities to have a late Mass around noon time for the young people, which is commonly styled "*an accommodation Mass*",[1] a low Mass during which the Gospel is read and a five-minute sermon preached, but in any event the entire services are scheduled to last no longer than thirty or thirty-five minutes at the most so as to finish sharp at 12:00 noon, or where the Mass starts at noon, not beyond 12:35 P. M.

In parish churches where there is a pastor and a steady assistant-pastor assigned by the Bishop, quite often both of them are making use of the faculty[2] of bination in order to make it "*convenient for the people*" of the parish to choose one of the four Masses in that church.

In smaller parishes where there is just one priest, the pastor, bination on Sundays and holydays of obligation is rather a case of necessity. There always is a group of people who other-

[1] In many instances it might seem to have been introduced for the sole reason that there is a noon Mass in the neighboring churches or church.

[2] The term "faculty" is purposely chosen in accord with can. 806, § 2 in order to avoid ambiguity in terminology employed in this elaboration.

wise would *" miss Mass "*, unless the pastor had two Masses in his church. But even in these smaller parish churches, heretofore having only two Masses on Sundays and holydays of obligation, a third Mass has been added to make a regular schedule of three Masses for the *" accommodation or the convenience of the people "*. Usually a Father from a nearby religious community will say one of the scheduled Masses in church A, and, in case of necessity, will also binate and say his second Mass in church B under these same conditions.

Even in hospitals, orphanages, asylums and other pious or religious institutions where the chaplains formerly distributed holy Communion to the Sisters in charge and to the inmates of those institutions at a convenient time in the early morning, at about six o'clock, and celebrated just one Mass somewhat later, at about eight o'clock, in order to accommodate all the inmates of the institution, they now quite frequently binate on Sundays and holydays of obligation, thus making it *" more convenient "* for some of the Sisters and also for some of the inmates under their charge. The writer has been well informed from reliable sources that in some instances the celebrant does not even have to wait long between his two Masses, some twenty to thirty minutes at the most, when a half-dozen Sisters and about the same number of inmates leave the chapel and an equal number of Sisters come into the chapel and thus avail themselves of the opportunity to assist at the second Mass. There is no doubt, however, that there is no necessity of bination in some of these institutions, if holy Communion be distributed at a convenient hour earlier in the morning and Mass be said by the chaplain at a later hour in the morning, for example, between seven and eight o'clock.

And still *" maiora mirabilia videmus hodie "* in some parish churches in care of a religious community where four or five Masses are scheduled for Sundays and holydays of obligation and five or more Fathers habitually reside under the same roof with the pastor and an assistant, the latter assigned *ex officio* to take care of the parish work. In the usual case, all the Fathers have the faculties of the diocese to binate in some

form similar to this: "Celebrandi duas Missas diebus dominicis et festis de praecepto, ut habeatur numerus statutus missarum in tua vel alia ecclesia". The pastor, probably not unskilled in moral theology, and judging from not infrequent practice, might seem to argue this way: "This faculty is broad and should not be subjected to a narrow interpretation. If any of the older Fathers, although entirely free, does not care to take one of the parish Masses in church, he may say his Mass at any convenient time, because my assistant and myself have the faculty to binate and we may do so although other priests are available". One may even conceive that he might invoke the authority of Vermeersch-Creusen [3] and an identical case proposed and solved in *The Homiletic and Pastoral Review.*[4]

Is bination, then, according to canon 806, § 1, a faculty for a necessity or a privilege of convenience?

For a better understanding of the faculty of bination we must set aside all the *placita pastorum* concerning "*accommodation Masses*" or the equivalent of "*convenience*" of the people and even of the priests; we should not be satisfied with a mere superficial explanation of one or two modern authors to whom we may repeat the well-known adage: "In tantum valent argumenta in quantum valent rationes". We must take the faculty of bination as it is worded in canon 806, § 1 and § 2, read it with reflection and earnestness, as it was written and debated by the codifiers and finally approved by the supreme lawgiver, the Pope. And in order to grasp the meaning of a particular law we cannot follow our own interpretation, but must follow the meaning of the words embodied in the text, the context and the *loci paralleli* of the Code and, in case of doubt, also consult the sources of the previous legislation in this matter, the purpose, circumstances and the in-

[3] Vermeersch-Creussen, *Epitome juris canonici*, 4 ed. (1930), II, 38: "Quare, adveniente forte alio sacerdote qui Missam hora populi consueta dicere velit, facultas binandi reipsa aufertur." Cl. auctor hoc in casu videtur relinquere optionem alio sacerdoti forte advenienti.

[4] *The Homiletic and Pastoral Review*, XLI (1941), 639.

tention of the lawgiver.[5] Moreover, because the faculty of bination is based upon several[6] documents of the Apostolic See, issued on this matter long before the promulgation of the Code of Canon Law, we must also adhere to the rule laid down in can. 6, 2°: "Canones qui ius vetus ex integro referunt, ex veteris iuris auctoritate, atque ideo ex receptis apud probatos auctores interpretationibus, sunt aestimandi". And due to the fact that our inquiry is put in the vexatious alternative *aut . . . aut, non datur tertium;* for this reason, if bination is based on a case of necessity, it automatically must exclude any inclusion of a privilege of convenience, option or any equivalent, and vice versa. The legal text, the context, the parallel passages in the Code, and the sources of the pre-Code legislations, however, speak of and admit only the case of necessity in view of the circumstances of time, persons and place. Therefore there is no room for convenience, accommodation, option, etc.

I.—Bination Warranted in a Case of Necessity Only

1. This statement is evident from the words which are embodied in the text and context of canon 806, § 1, and § 2:

"Excepto die Nativitatis Domini et die Commemorationis omnium fidelium defunctorum, quibus facultas est ter offerendi Eucharisticum Sacrificium, non licet sacerdoti plures in die celebrare Missas, nisi ex apostolice indulto aut potestate facta a loci Ordinario.

Hanc tamen facultatem impertiri nequit Ordinarius, nisi cum, prudenti ipsius iudicio, propter penuriam sacerdotum die festo de praecepto notabilis fidelium pars Missae adstare non possit; non est autem in eius potestate plures quam duas Missas eidem permittere".

[5] Can. 18: "Leges ecclesiasticae intelligendae sunt secundum propriam verborum significationem in textu et contextu consideratam; quae si dubia et obscura manserint, ad locos Codicis parallelos, si qui sint, ad legis finem ac circumstantias et ad mentem legislatoris est recurrendum.

[6] There are fifteen various documents, issued by the Apostolic See, in reference to bination quoted in the footnote to can. 806, § 2, some of which will be quoted *verbatim* in order to prove the juridico-canonical foundation of bination.

2. There is only one parallelism in the Code, directly having reference to our statement: "Sacerdotes qui contra praescripta can. 806, § 1, 808 praesumpserit Missam eodem die iterare vel eam celebrare non ieiuni, suspendantur a Missae celebratione ad tempus ab Ordinario secundum diversa rerum adiuncta praefiniendum" (can. 2321).

3. Canonical sources in the pre-Code legislation are fifteen quoted in the footnote to can. 806, § 2; due to the fact, that they are almost identical as to the extent of the faculty of bination, only the principal and so to say the fundamental are herewith submitted:

a) Pope Benedict XIV [7] in his epistle to a certain Bishop [8] goes into a lengthy discussion of when and where bination is permitted. Being himself an eminent moralist and canonist during his time,[9] he quotes several eminent authorities in this matter and argues: ". . . id tamen unanimi consensu permittitur sacerdoti, qui duas parochias obtineat, vel duos populos adeo seiunctos, ut alter ipsorum parocho celebranti per dies festos adesse nullo modo possit, ob locorum maximam distantiam: tunc enim absque ulla dubitatione licere eiusmodi Rectori, cum festi dies incidunt, bis Sacrum conficere, ut populo utrique satisfaciat" (§ 1).

"Ea potissimum verba diligenter observari debent: *Ubi non est, nisi unus sacerdos,* necnon alia: *nec sunt in ecclesia duo sacerdotes*: ex quibus clare perspicimus, non licere parocho, si alius sacerdos praesto sit, duo Sacra perficere diebus festis, ut populus Missae Sacrificio intersit, sive Missa celebranda sit in duabus ecclesiis inter se distantibus, ut in supra citata Synodo Limana,[10] sive una tantum sit ecclesia, in qua

[7] Benedictus XIV, ep. "*Declarasti*", 16 mart. 1746—*Fontes Codicis Iuris Canonici*, n. 365.

[8] This epistle is addressed to: Venerabili Fratri Antonio Episcopo Oscensi.

[9] By many historians called the "princeps moralistarum ac canonistarum sui aevi". Cf. Marx, J., *Lehrbuch der Kirchengeschichte* (Trier, 1903), p. 643: "Benedict XIV . . . rechnet zu den gelehrtesten Päpsten . . ."

[10] Quoted by him in the preceding § 4: ". . . Cum autem habuerint alium sacerdotem, qui possit celebrare in altera dictarum ecclesiarum, non poterit parochus celebrare in utraque, sed unam Missam tantum in una, quandoquidem alter sacerdos possit satisfacere necessitati alterius populi".

celebratur Missa, et ad quam insimul universus populus convenire non potest, ut in Synodo Nemausensi. Hi quippe duo casus eodem iure censendi sunt . . ." (§ 7).

" Certum quoque est, facultates eiusmodi, nisi necessitas id postulet, nunquam concedi; vel, si aliquando concedantur, non haberi tamquam alicuius sacerdotis privilegium, sed tantum ob causam peculiarem necessitatis. Fagnanus id fatetur, Cap. *In ordinanda,* num. 37, de Simonia: Miratur Sacra Congegatio agi de his licentiis concedendis; nam id nonnisi ex magna necessitate fieri debet, et magna cautela, ut puta in locis, ubi perpaucissimi sunt sacerdotes, vel adsunt impedimenta adversariorum Fidei, vel quid simile etc. Nec concedi potest haec licentia ab Episcopo generaliter, quasi privilegium alicuius sacerdotis sed tantum in aliquo casu particulari, necessitatis causa ab Episcopo examinanda . . ." (§ 21).

b) The same Pope Benedict XIV in his encyclical letter "*Apostolicum ministerium*" repeats the same legislation concerning bination: " Nam Vicarius Apostolicus in hac facultatum genere, specialis Sanctae Sedis Delegati personam gerit, cui liberum est subdelegare, nedum ex communi iure, verum etiam ex singulari auctoritate illi demandata . . . id enim arbitrio relinquitur Vicarii Apostolici, qui, cum in loco consistat, et personas dignoscat, quibus facultates conceduntur, animarum necessitates animadvertat, et casuum frequentiam, decernere facilius potest, qua magis opportuna, et salutaria videantur. Inter ceteras illa adnumeratur facultas, per quam copia fit sacerdoti bis Sacrum peragendi uno eodemque die, licet id expresse prohibeatur capit. *Consuluisti, de celebratione Missarum;* cui tamen derogatur ob necessariam causam, videlicet ob sacerdotum paucitatem, vel cum eorum numerus, qui diebus festis tenentur sacris assistere, talem exhibeat necessitatem, ut, nisi alicui sacerdoti duas Missas eodem die celebrandi potestas concedatur, Ecclesiae mandato plures non satisfacerent; quod copiose declaratum est *Constitutione* 3 in praesenti nostro Pontificatu emissa, et Oscensi Episcopo inscripta, Tom. 2 Bullarii [11]. Hinc facile apparet abusio intolera-

[11] Quoted in the foregoing three paragraphs.

bilis, quae patraretur, si cuiquam sacerdoti rem divinam faciendi bis in diem facultas tribueretur, eum in finem, ut duplici eleemosyna decentius se sustentaret; quantoque magis sacerdos peccaret, si Missae Sacrificium bis uno die conficeret sine opportuna Vicarii Apostolici concessione; vel sub populi necessitatis praetextu eam peteret, atque obtineret, licet reipsa plurium eleemosynarum cupiditate ad id moveretur." [12]

c) The Sacred Congregation of the Council in 1843 issued an instruction *circa Missae iterationem.*[13] It stated: "Ordinariorum esse de re cognoscere et perpendere num revera necessitas urgeat ut sacerdos duas Missas celebrare cogatur, nec aliter utendum concessa hac iteratione quam iuxta conditiones ab ipsis apponendas, habita locorum, populorum et paucitatis sacerdotum, ac proinde verae necessitatis ratione, de qua legatur Benedicti XIV. Constit. *Declarasti ad Ep. Oscensem,*[14] anni 1746, et in eius opere *De Sacrificio Missae* lib. 3, cap. 5 et 6. Ipsorum vero conscientia oneratur stricte, nec permissio concedatur generaliter, quasi privilegium alicui sacerdoti, sed ob peculiares casus, et necessitatis causa ab ipso (Ordinario) examinata, qui praeterea moneat parochos quibus facultatem iterum, eadem die, secundam Missam celebrari concesserit, ne eleemosynam vel stipendium a quovis et sub quocumque praetextu pro ea percipiant, iuxta decreta alias edita a S.C., sed eam pro populo sibi commisso gratis applicent".

d) In 1897 the Sacred Congregation of the Council issued a decree about bination. This decree is very much to our point, and for this reason the text of it is herewith given in full:

[12] Benedictus XIV, ep. encycl. *"Apostolicum ministerium"*, 30 maii 1753, § 11—*Fontes Codicis Iuris Canonici*, n. 425. As we may see from the wording of both these documents, his *mens legislatoris* is well incorporated into can. 806, § 2.

[13] S. C. C., *instr.*, 14 oct. 1843—*Collectanea S. Congregationis de Propaganda Fide* (Romae, 1907), I, n. 985.

[14] *Fontes Codicis Iuris Canonici*, n. 365 quoted already above. As we may see, this constitution of Benedict XIV is considered the basic document about bination and is quoted by all subsequent decrees and instruction on bination, issued by the various Sacred Congregations.

"1. An liceat Episcopo licentiam binandi concedere presbytero, unam Missam celebrandi in oratorio suburbano vel rurali, aliam vero in civitate vel loco ubi etiam adsint alii sacerdotes sacrum facientes.

"2. An liceat huiusmodi licentiam concedere presbytero ambas Missas celebraturo in diversis ecclesiis eiusdem civitatis vel loci in quo et alii sacerdotes celebrant, et hoc etiam si una ex Missis celebranda sit in qua et alius sacerdos sacrosanctum Sacrificium eadem die litat.

"3. An expediat Episcopo oratori ob expositas rationes et allatas causas [15] huiusmodi licentiam et agendi rationem confirmare: et ad similes casus, in aliis locis et civitatibus suae dioecesis, prout necessitas expostulet, extendere.

"R. Ad 1, 2 et 3: Non licere; et Ordinarius, quatenus in aliquo ex enunciatis casibus necessarium iudicet ut Sacrum iteretur, recurrat ad Apostolicam Sedem" [16]

e) Concerning directly the insufficiency of the purpose of "*accommodation*" or "*convenience*" only, and *a fortiori* of "*competition,*" there are also several decrees issued by the Apostolic See. I shall quote only two of them to our point:

"Rmus D. Stephanus Antonius Lelong Episcopus Nivernen. quae sequuntur Sacrae Rituum Congregationi exposuit, opportunam declarationem seu resolutionem humillime expostulans; videlicet: [17]

"IV. 4: Quando valde utilis est, vel etiam necessaria ista secunda Missa ut communicari a fidelibus cum maiori facilitate et aedificatone frequentius possit?

"Sacra itaque Rituum Congregatio, referente eiusdem Secretario, hisce postulatis sic respondit:

[15] There is a footnote (2) inserted which reads: "En causae allatae: 'paucitas sacerdotum. convenientia distinctae celebrationis horis distinctis, ut commoditati fidelium fiat satis. necessitas celebrandi Missam parochialem in paroeciis, et conventualem in monasteriis'."

[16] S. C. Concilii 10 Mai 1897.—*Malacitan.—Collectanea S. Congregationis de Propaganda Fide* (Romae, 1907), II, n. 1968.

[17] Quaesita I, II, III, IV, 1, 2, 3 are purposely omitted in this quotation, because they have no direct bearing on bination as here discussed.

"Ad IV. Posito quod Episcopus iam facultatem obtinuerit a S. Sede ad concedendum sacerdotibus suae Dioecesi indultum bis in die festo Sacrum litandi, erit suae prudentiae hac speciali facultate in casu necessitatis [18] pro populo uti; si vero eiusmodi facultate ipse non sit instructus, eam impetrare poterit.[19]

"Atque ita respondit ac declaravit ".[20]

f) " Reverendissimus Ambianensis Episcopus comperit, quod in sua Diocesi ex usu fere generali sacerdotes bis celebrent Missam diebus Dominicis et Festis . . . Unde latius extenditur usus praefatus, ut nonullis in locis bis celebretur etiam super idem altare, aut super altaria diversa,[21] *sed sine gravi necessitate.* Ut ambiguitas omnis e medio tollatur, Episcopus Sacram Rituum Congregationem exposcit super sequentibus dubiis: [22]

" 2. An liceat parocho in urbe constituto iterare Missam iisdem diebus super diversa altaria, sed tantummodo ad consulendum parochianorum *commoditati;* v. gr. ut celebretur Missa hora octava, quando iam celebratur variis horis, videlicet hora sexta, septima, nona et decima? ".

" Et Eminentissimus ac Reverendissimus Dominus Cardinalis . . . Sanctae Romanae Ecclesiae Vice-Cancellarius ac Sacrae Rituum Congregationi Praefectus, vigore facultatum sibi specialiter a Sanctissimo Domino Nostro Gregorio XVI tributarum, rescribi ad omnia mandavit: ' Sine speciali Apostolico Indulto non licere; et teneri Episcopum consuetudinem seu abusum omnino eliminare ' ".[23]

g) The Third Plenary Council of Baltimore, adhering strictly to the various decrees and instructions issued by the Holy See, gives us a summary how to understand and pract-

[18] Note the answer of the Sacred Congregation: only the *causa necessitatis* is taken into consideration, *but not the causa utilitatis.*

[19] This power is given now to the Bishop in can. 806, § 2.

[20] S. R. C., *Nivernen.,* 8 mart. 1879, ad IV—*Decreta Authentica,* n. 3484.

[21] "*Altaria diversa*" in the old ecclesiastical documents stand for "*ecclesiae diversae*".

[22] For brevity's sake, only the essence of the long introduction and No. 2 of this decree is copied. Italics inserted.

[23] S. R. C., *Ambianen.,* 22 mart. 1841—*Decreta Authentica,* n. 2827 (4915).

ically apply the faculty of bination: "Sed neque vult Sancta Sedes ut ob timorem rigoris quo munitur facultatis formula nimis angantur eadem utentes. E saepius enim repetitis Apostolicis declarationibus et responsis manifestum est ad iterationem *veram* quidem *requiri necessitatem,* haudquaquam tamen absolutam sed moralem, quae existere censenda est quoties deficiente presbyterorum copia aliisque omnibus circumstantiis mature perpensis iudicetur, fidelibus vehementer utile fore ut sacerdotes bis Missam eodem festo die celebrent. Cuiusmodi si adfuerit, non tantum haud timeant reatum illicitae iterationis, sed potius existiment se muneri suo defuturos, si vel ipsi *pro populi necessitate* Missam non iteraverint vel missionariis suis hanc facultatem non concesserint".

"Bene notent missionarii sacerdotes se nunquam praedicta facultate uti posse nisi "dependenter ab Ordinario, ad quem pertinet tum *de vera necessitate,* tum de possibilitate canonica remedia applicandi ferre sententiam . . . neque praesumendam a quoquam esse licentiam quamdiu recursus ad Ordinarium patet . . .".[24]

From all these above quoted sources it is evident that bination is warranted in *a case of necessity only for the benefit of the people* to assist at holy Mass on Sundays and holydays of obligation. This faculty, however, is dependent on the prudent judgment of the Ordinary, and may be granted only if there is not a sufficient number of priests who can take care of the necessary schedule of Masses in that particular church according to the rules laid down in the various decrees and instructions of the Apostolic See.

[TO BE CONTINUED]

CYRIL PIONTEK, O.F.M.

GREEN BAY, WISCONSIN

[24] Decreta Concilii Plenarii Baltimorensis Tertii (1884), nn. 104, 105. Italics inserted.

Cases and Studies

Question. I have been taking the place of Father N. N. in a new parish which has so recently been established that as yet it has no parish plant, not even a church. Father N. N. has been saying Mass in a moving picture house; and I have used *epikeia* for two Sundays in doing the same. But I have become disturbed over the matter, especially after speaking about it with some of my confrères. The provisions of the Council of Baltimore permitting the celebration of Mass outside of a church or oratory are contrary to the Code and are consequently repealed. On the other hand, the ordinary's present power to permit the celebration of Mass outside of a church or oratory extends only to individual cases according to the law of canon 822, § 4.

SUBSTITUTUS

Answer. Canon 822, § 1: Missa celebranda est super altare consecratum et in ecclesia vel oratorio consecrato aut benedicto ad normam iuris, salvo praescripto can. 1196.

Canon 822, § 2: Privilegium altaris portatilis vel iure vel indulto Sedis tantum Apostolicae conceditur.

Canon 822, §3: Hoc privilegium ita intelligendum est, ut secumferat facultatem ubique celebrandi, honesto tamen ac decenti loco et super petram sacram, non autem in mari.

Canon 822, § 4: Loci Ordinarius aut, si agatur de domo religionis exemptae, Superior maior, licentiam celebrandi extra ecclesiam et oratorium super petram sacram et decenti loco, nunquam autem in cubiculo, concedere potest iusta tamen ac rationabili de causa, in aliquo extraordinario casu et per modum actus.

Canon 1196, § 1: Oratoria domestica nec consecrari nec benedici possunt more ecclesiarum.

Canon 1196, § 2: Licet oratoria domestica et semi-publica communi locorum domorumve benedictione aut nulla benedictione donentur, debent tamen esse divino tantum cultui reservata et ab omnibus domesticis usibus libera.

Canon 1249: Legi de audiendo Sacro satisfacit qui Missae adest quocumque catholico ritu celebretur, sub dio aut in quacumque ecclesia vel oratorio publico aut semi-publico et in privatis coemeteriorum aediculis de quibus in can. 1190, non vero in aliis oratoriis privatis, nisi hoc privilegium a Sede Apostolica concessum fuerit.

The cited canons clearly show that without faculties over and above those which the Code gives to a local ordinary, the latter can

not within the letter of the law permit by way of a general grant the Sunday after Sunday celebration of Mass in a building which is not at least a semi-public oratory. It may indeed be asked whether the phrase "*in aliquo extraordinario casu*" in canon 822, § 4, should be understood as pointing simply to some emergency situation, or as pointing only to an individual and isolated instance in which an emergency is present. But even if a person accepts the former of these two conceivable interpretations, there still remains the fact that the ordinary can not grant permission for the celebration of the Mass by way of a permission imparted for habitual use, but only by way of a specific and individual provision for each separate contingency (*per modum actus*), for canon 822, § 4, reads: "*. . . in aliquo extraordinario casu et per modum actus.*"

A similar wording, which in addition reflects the contrast between the word "*habitualiter*" and the phrase "*per modum actus*", is employed in canon 1194. The habitual permission which the ordinary can give for the celebration of even several Masses in a private cemetery chapel stands contrasted with the permission which he can give for the celebration of but a single Mass in other private oratories, *per modum actus, in casu aliquo extraordinario.* Likewise in canon 1195, § 2, the ordinary is empowered to permit the celebration of Mass in domestic oratories on the feasts of greater solemnity, but only *per modum actus.* And with a like import the Pontifical Commission for the Interpretation of the Code pronounced that an ordinary's faculty, as outlined in canon 822, § 4, namely, to grant permission for the celebration of Mass in a private house, was to be interpreted restrictively.[1]

The same trend of a restrictive interpretation was revealed in the settlement of a case which was submitted to the Sacred Congregation of the Sacraments by the Bishop of Mondovi in Piedmont, Italy.[2] It was asked whether the faithful who live in mountain hamlets may be given holy communion in a sacred place whenever holy communion is brought to the sick, or, since there is question of so sacred a matter, whether this may even be done in a decent and suitable place along the way, when they are unable on that day to go to the church. The answer was given in the affirmative, in accordance with the norm of canon 869 in connection with that of

[1] October 16, 1919, n. 12—*AAS*, XI (1919), 478.

[2] January 5, 1928—*AAS*, XX (1928), 79-81.

canon 822, § 4, that is, provided that the local ordinary grants the faculty according to the provision cited, namely, "*pro singulis casibus et per modum actus.*"

Of particular interest in this submitted case are the annotations furnished by the Secretary of the Congregation. He stresses the fact that the local ordinary can delegate the faculty which he possesses in virtue of canon 822, § 4, inasmuch as this faculty is simply one of his ordinary powers of office. But, so the Secretary of the Congregation continues, in consideration of the gravity of the matter and the narrow limits within which this power is restricted, the ordinary should not delegate it unless the person to whom he proposes to delegate it be of such prudence that it may be foreseen that he will not abuse the power. Besides, in the act of delegation it must be clearly explained *what constitutes a just and reasonable cause,* and what cases are to be regarded as *extraordinary.* The delegate must also know that a grant of the permission for a certain case does not extend to another case, even though the same circumstances exist, but that the permission must be expressly renewed by him.

From the foregoing it appears that perhaps the most practicable way to meet a given emergency in a certain locality will consist in the local ordinary's delegation of the priest, so that the latter will possess the very faculty which canon 822, § 4, concedes to the ordinary. In that manner the priest can repeatedly *per modum actus* provide for the needed celebration of Mass in a building which is not a semi-public oratory, provided that it is a decent and suitable place. And if the pastor possesses this faculty, then his lawfully approved substitute will likewise possess the same faculty as long as the local ordinary or the pastor has not expressly withheld the grant, for by law the substitute holds the pastor's place in all the matters that pertain to the *cura animarum* (canon 474).

In the light of the rule enunciated in canon 1249, what is to be said about the people's fulfillment of their Sunday obligation when they hear Mass in a building which is not at least a semi-public oratory? Is there required an additional grant if the hearing of Mass under the circumstances is to be honored by the law as the fulfillment of what is required in the Sunday obligation, or does the very grant to celebrate the Mass carry with it the implied acknowledgment that those who attend it can thereby also fulfill their Sunday obligation, despite the fact that their attendance does not

connote one or the other of the modal circumstances that are declared essential in canon 1249? Since it is the purpose of the grant to make possible for the people the hearing of Mass on Sunday under circumstances which abstract from the normal requirement of the law regarding the place of celebration, it appears to follow quite naturally that the grant also contemplates that the Sunday obligation will be fulfilled under the circumstances in which the hearing of Mass is rendered possible.

The fact may of course be that such ordinaries in the United States who have to provide for their people under missionary conditions possess at the same time special faculties which allow for a freer and for a less restricted mode of procedure than the one which is necessitated by the law of canon 822, § 4. But the quinquennial faculties, which all the local ordinaries in this country have in common, do not incorporate any faculty that grants any greater freedom of action for ordinaries than the restricted power which canon 822, § 4, makes available for them.

CLEMENT BASTNAGEL

THE CATHOLIC UNIVERSITY OF AMERICA
WASHINGTON, D. C.

Question. A member of my parish, hearing of the desecration of the Blessed Sacrament in one of our neighboring parishes, has offered to install an alarm system between the *suppedaneum* and the rectory.

It is rather an inconvenience to have the alarm system. If a priest goes on a sick-call in the middle of the night and forgets to turn off the switch before he leaves the house, then his approach to the tabernacle will awaken the whole house. Strictly also he should come back to the house to turn on the switch before setting out to the home of the sick person, and this may occasion a fatal delay in the case of an urgent call. If he does not return to the house, then the purpose of the alarm system is defeated during the interval of his absence from the house.

In most of the rectories in which the alarm system is installed, the switch is turned off during the day. Thus there is no protection at a time when it seems just as necessary as in the evening or during the night.

For these reasons I wish to refuse the acceptance of the offer to have an alarm system installed. In addition, confusion and disturbance will attend the installation of this system for the church. Am I obliged to accept the offer of this generous parishioner, or may I decline to accept it?

PAROCHUS

Answer. Canon 1269, § 1: Sanctissima Eucharistia servari debet in tabernaculo inamovibili in media parte altaris posito.

Canon 1269, § 2: Tabernaculum sit . . . undequaque solide clausum . . . ac tam sedulo custodiatur ut periculum cuiusvis sacrilegae profanationis arceatur.

Canon 1269, § 4: Clavis tabernaculi . . . diligentissime custodiri debet, onerata conscientia sacerdotis qui ecclesiae vel oratorii curam habet.

Canon 1536, § 2: Donatio facta ecclesiae, ab eius rectore seu Superiore repudiari nequit sine licentia Ordinarii.

Canon 1536, § 3: Repudiata illegitime donatione, ob damna quae inde obvenerint actio datur restitutionis in integrum vel indemnitatis.

The generosity of this parishioner indeed reflects a noble religious attitude. It denotes in a very tangible way his profound sense of solicitude for the provision of effective means whereby the Blessed Sacrament may be duly safeguarded against the danger of profanation or desecration. Like other generous intentions, however, which in their execution simultaneously make some positive demand upon other persons, the present intention should be found to be practicable before any encouragement be given to make it operative.

From a recent *Instruction* of the Sacred Congregation of the Sacraments on the proper care and custody of the Blessed Sacrament,[1] it is evident that as a specific precaution to that end there is specially recommended the installation of an electrical alarm system in the church. But such a device, in order to attain its purpose, must be skillfully and ingeniously concealed so as to arouse no suspicion in the malefactors, and must be daily inspected to see that it is properly functioning.[2]

Now, a recommended line of action, as indicated in an *Instruction* from any of the Sacred Congregations, is surely not the equivalent of a binding law. After as before this *Instruction,* the *law* on the custody of the Blessed Sacrament is contained in canons 1265 ff., and particularly in canon 1269 relative to the required safeguards against possible desecration. The tabernacle must be fixed and stationary (§ 1), solidly closed on all sides and so carefully protected that all danger of sacrilegious profanation be averted (§ 2), and the key to it must be guarded most diligently (§ 4). The *Instruction* reveals how these required precautions can effectively be met, even apart from the further recommendation of installing an alarm system.

The circumstances in the case here presented are such that little additional security can derive from the executed desire of the generous parishioner. On the other hand, if his pious desire be put into effect it will occasion a number of inconveniences and drawbacks,

[1] May 26, 1938—*AAS*, XXX (1938), 198-207.

[2] *Ibid.*, p. 202.

the submission to which seems to be a disproportionate price to pay for the modicum of obtainable added security. It is hardly to be assumed in any situation that a conscientiously performed duty can be subjected to a further intensified performance solely through the medium of a private individual's willingness to defray the financial cost which sets the stage for such a performance.

It appears irrelevant in this connection to point to the law of the Code which insists that the rector of a church may not without the approval and permission of the ordinary repudiate a "*donatio facta ecclesiae*" (canon 1536, § 2). The repudiating of an accepted donation is one thing; the declining of a promised offer is another. Even if one were to regard the intimated offer of the parishioner as the equivalent of an offering already made, one could still question the nature of the offer in the sense that it is really a donation. If the acceptance of an offer entails liabilities which are disproportionately grave and exacting in relation to the benefits which may be derived from the accepted offer, then the offering made ought not to be considered as implying a donation.

In the light of the circumstances that surround the present case a declining of the offer seems to protect rather than to compromise the interests of the church for which the rector is responsible. His refusal to accept the offer correspondingly appears to be not only a justified, but also a well-advised, and possibly even an obligatory course of action.

To render the decision whereby he refuses to accept the alarm system appears then to be perfectly within the discretion of the rector. Consultation with the ordinary before an ultimate refusal may be made does not seem indicated by the law in canon 1536, § 2.

If the rector of the church has reason to doubt that with his own powers of persuasion he can convert the generosity of the parishioner into more useful channels, it is then of course expedient to refer the case to the ordinary with the hope of such a successful issue. But this manner of procedure follows the lead of expediency rather than that of enacted law, and as such ought not to be regarded as a matter of strict obligation.

CLEMENT BASTNAGEL

THE CATHOLIC UNIVERSITY OF AMERICA
WASHINGTON, D. C.

MARRIAGE PREPARATION FILE

Question. I am writing for a point of information regarding the Instruction issued by the Sacred Congregation of the Sacraments, 29 June 1941, concerning the prenuptial investigation.

The question that has arisen in my mind is, "Where is the record of the investigation to be preserved?" The Instruction, at least as far as I can see, gives no information on this point.

In Appendix V I read, "Visis documentis huic Curiae exhibitis ibique asservatis." This is the only reference that I find regarding the preservation of the documents in the Chancery and this reference I take to refer only to the cases in which the "*nihil obstat*" is required.

CANCELLARIUS

Answer. The *adnotatio* at the end of Appendix I indicates that the certificates of investigation sworn to and subscribed by the spouses are to be kept with the acts of the marriage. Under Canon 470, § 3, authentic copies of parish registers are to be sent to the Chancery archives at the end of each year. It would seem that copies of these authentic certificates of investigation should accompany the report. The originals should be preserved in the parish archives.

Appendix V is a blanket summary prepared by the officiating pastor to expedite the signatures of the Ordinary granting the *nihil obstat* or of the pastor granting permission for the celebration of a marriage by a priest of an alien parish. The officiating pastor sends it to the pastor granting the permission, together with documents proving the points summarized. He acts similarly in applying for a *nihil obstat* whether from the Ordinary of the groom when the latter resides in an alien diocese (as required by the Instruction), or from his own Ordinary when the groom resides in the same diocese but in an alien parish (as recommended by the Instruction).

Where the officiating pastor is pastor of neither the bride nor the groom (acting therefore by permission of the proper pastor), he would logically be expected to prepare this form at least for the pastor of the bride. According to the strict language of the Instruction, this would seem to suffice, even though the officiating pastor belonged to a diocese diverse from that of the pastor granting the permission, provided that both bride and groom resided in the diocese of the latter. In such a situation it would seem certainly to suffice if bride and groom both resided in the parish of the pastor granting permission. If spouses reside in different dioceses, however, the officiating pastor must obtain the

nihil obstat from the Ordinary of the party residing in the diocese alien to that of the pastor granting the permission, unless the latter forwards it along with his permission.

The Ordinary (or the pastor granting permission) signs the certificate after inspecting the documents and sends it to the officiating pastor, who notes on it the date and place of the marriage and files it with the acts of the marriage. The documents are filed by the Ordinary (or the pastor granting permission) with possibly a carbon copy of the certificate (though this is not explicitly provided for in the Instruction). It would seem, however, that a copy should be sent to the Chancery of the officiating pastor when the latter sends copies of his registers at the end of the year.

ERECTION OF THE WAY OF THE CROSS

Question. My dean refuses to use the faculties given him by the Ordinary in 1930 for the erection of the Way of the Cross. He alleges that the faculty which the Ordinary had received from the Superior General of the Franciscans with power of subdelegation authorizes the erection of the Stations only when there is no Franciscan house in the community. There is a Franciscan stationed in the next town, two miles away, closer indeed than the parish of the dean. There is only one priest stationed at the parish of the Franciscans.

VICARIUS ECONOMUS

Answer. First of all, titular as well as residential bishops enjoy the personal privilege of erecting the Way of the Cross.[1] This power, however, can not be delegated to deans, pastors, or in fact to any one.

Faculties were once granted, it seems, by the Order of Friars Minor to bishops with the power of subdelegation but with the proviso that they were to be used only when there was no house of Franciscans in the place where the Stations were to be erected or also, it seems, when the Franciscan Fathers could not without grave inconvenience to themselves comply with a request for the erection of the Way of the Cross.

It is certain that after the issuance of the Decree of the Sacred Penitentiary, "*Consilium suum persequens*," of March 20, 1935,[2] such concessions could no longer be made by Orders or Congregations to priests not members of the respective religious institute.

[1] Cf. Canons 349, 1°; 239, 6°.

[2] *AAS*, XXV (1933), 170.

The words of the Decree are clear. "Quod vero ad privilegia attinet quibusdam Ordinibus vel Congregationibus religiosis concessa . . . stationes Viae Crucis erigendi, haec ipsis manent, ea tamen lege ut in posterum membra eorumdem Ordinum vel Congregationum uti eisdem valeant tamen personaliter, non autem ita ut ea concedere quoque possint aliis sacerdotibus ad eosdem Ordines vel Congregationes non pertinentibus: hi enim omnes facultates, usui talium privilegiorum necessarias, tantummodo a Sacra Paenitentiaria, modo superius indicato, obtinere poterunt".

One might be inclined to argue that in virtue of Canon 207, § 1,[3] the privilege of subdelegating, if granted by the Order prior to March 20, 1933, was not lost upon the issuance of the Decree, "*Consilium suum persequens.*" For under this Canon a delegated power is not lost when the power of the person delegating is withdrawn. The same conclusion is suggested as to privileges by Canon 73.[4] On the other hand, the tenor of the whole Decree seems to demand a complete readjustment of the manner in which these and similar faculties *are granted in the future.* Indeed, the words requiring application to the Sacred Penitentiary seem to admit of no exception unless a priest belong to the Order or Congregation enjoying the privilege. After enumerating the various faculties under discussion, the decree says, "Qui, igitur, sacerdotes hac vel illa ex supra recensitis facultatibus aut hoc vel illo ex supra memoratis indultis posthac augeri cupiant, nonnisi directe atque immediate a Sacra Paenitentiaria desideratam gratiam se obtinere posse sciant, oblatis toties quoties peculiaribus proprii Ordinarii ad rem litteris commendatitiis".

As for those who have these faculties by delegation, they may still use them. The Decree, "*Consilium suum persequens*" does not expressly revoke the faculties that have been delegated legitimately in the past. By canon 73, privileges do not become extinct upon the grantor's loss of power, unless they were granted with the clause, "*ad beneplacitum nostrum*" or its equivalent. It matters not how that power (i. e., authority of the grantor over the subject) may have ceased; privileges granted in virtue of that power do not cease. They retain their juridic force even though they should be granted

[3] Potestas delegata extinguitur . . . "non autem resoluto iure delegantis . . ."

[4] "Resoluto iure concedentis, privilegia non extinguuntur, nisi data fuerint cum clausula: *ad beneplacitum nostrum*, vel alia aequipollenti."

for a period of time.[5] Also since the Decree concerns only the delegation of faculties and not faculties *delegated,* there is no question of the revocation of them by an authority superior to that which granted them.

Of course, these faculties would be still restricted by the clauses expressed in the rescript, e. g., in regard to the faculty of erecting the Way of the Cross, that it could not be used in a community where there is a Franciscan house. Therefore in the case at hand, while the dean seems still to enjoy the faculty, it is subject to the restrictions contained in the rescript of the Superior General of the Franciscans. The solution of the case depends further on whether the existence of a *domus non religiosa* suffices to restrict the use of the faculties.[6] In the absence of any express provision it would seem that the condition based on the existence of a house should hold only where the house is truly religious, that is, consisting of at least three religious with a superior and erected by proper authority with a formal decree. This does not seem to be the case where one religious alone occupies the house as pastor of the parish, with due permission presumably to be absent from the cloister. Therefore, in the present case it would seem that the dean may make use of the faculties *granted him* prior to 1933.

It need hardly be added that should the dean enjoy the faculty by direct concession from the Sacred Penitentiary, the restrictions will no longer hold, even if there be a *domus formata* of the Order of Friars Minor in the vicinity.[7] This conclusion derives from a sweeping relaxation of such restrictions touching the erection of the Way of the Cross promulgated by the Decree of the Sacred Penitentiary on March 12, 1938.[8] Only the presumed permission of the local Ordinary would operate as a restricting condition to the use of such a faculty. The words of the latter Decree admit of no doubt. They read: ". . . abrogatis singulis conditionibus hactenus vigentibus, benigne decernere dignatus est ad validam stationum 'Viae Crucis' erectionem sufficere ut sacerdos idcirco rogatus, debita facultate sit praeditus, iuxta Decretum '*Consilium suum perse-*

[5] Cicognani, *Canon Law* (Philadelphia: The Dolphin Press, 1935), p. 815.

[6] Cf. Canon 497, § 1; Canon 100, § 2; Coronata, *Institutiones Iuris Canonici,* I (Taurini: Marietti, 1939), n. 523.

[7] Cf. Canon 488, 5°, for the concept of a *domus formata;* it is a more highly organized form of a religious house.

[8] Decree "*Iamdiu ac saepe*"—*AAS,* XXX (1938), 111.

quens' datum die 20 Martii, 1933; prorsus tamen decere, ratione praesertim ecclesiasticae disciplinae, ut singulis vicibus, nisi agatur de locis exemptis, accedat venia Ordinarii loci, ubi facultas exercetur, saltem rationabiliter praesumpta, quando Ordinarius facile adiri nequeat."

PERSEVERANCE OF MATRIMONIAL CONSENT

Question. A Catholic woman attempted marriage with an unbaptized non-Catholic on June 6, 1923, before a justice of the peace. Three years later she was reconciled with the Church and left the man's bed and board. Two years later, however, she relapsed and commenced cohabiting with him again. No divorce intervened and no marriage with any other persons. The Ordinary wonders whether he can use validly and licitly the quinquennial faculty from the Holy Office to grant a *sanatio in radice* and whether the latter would heal the marriage as of June 6, 1923, or as of the date when the renewed cohabitation began.

CANCELLARIUS

Answer: The condition, " provided that marital consent still endures " in the quiquennial faculties seems to impose no greater restriction on the granting of a *sanatio* than that contained in the common law under Canon 1139, § 1. Rather its purpose is declaratory, if one may use the term. It aims at inserting the provision of the common law in the use of the faculty. Therefore, one may say that this conditional clause may safely be construed according to the interpretations given by commentators of the almost identical clause in Canon 1139, § 1.

Although Cappello [1] indicates that *separatio a mensa et thoro* or even a petition for a declaration of nullity *lite pendente* does not destroy the presumption that the matrimonial consent remains, it would seem that repentance and absolution would indicate a complete break with the past. On the other hand, it could mean merely that there would be no further marital relations unless a regularization of the status could be accomplished *coram Ecclesia*. Frequently such an intention must be elicited from a Catholic who is dying and is unwilling completely to give up a consort with whom he has been cohabiting *sub figura matrimonii*. Surely, the latter has not surrendered the *consensus maritalis* elicited at the time of the attempted marriage. He clings to it and is anxious that some way

[1] Cappello, *De Sacramentis*, III, 2, *De Matrimonio* (Taurinorum Augustae: Marietti, 1939), n. 853, 3°.

may be found of making its continuance proper in the economy of his salvation. Very possibly such a continuation of the matrimonial consent would be found to have obtained in the case at hand. However, the Catholic woman should be questioned closely. If the Ordinary, having addressed to her questions calculated to elicit the knowledge desired, obtains no evidence that the matrimonial consent was ever positively revoked, but that only the relationship was suspended, he may use his faculty, healing the marriage as of the June 6, 1923.

Gasparri [2] would find no difficulty in dating the effect of the *sanatio* as of June 6, 1923, notwithstanding a real withdrawing of the consent in the interval. He would demand only consent as of June 6, 1923, and consent as of the date when the *sanatio* is issued, regardless of the existence or non-existence of consent in the interval.

In any event, there seems no doubt that the faculty can operate as of the date of renewed cohabitation. The renewed cohabitation was marital even though no express renewal of consent occurred. It was a resuming of what had been forsaken, not an assumption of a new relation. Therefore, even if the consent was revoked by the woman's reconciliation with the Church, it was renewed at the time when cohabitation was resumed. The woman certainly acted under the influence of the original exchange of consent, not with the intention of fornication.

VOID AND VOIDABLE

A glance at the use of the terms "void" and "voidable" by secular courts and attorneys in relation to marriage is probably the source of some confusion. The superficial obscurity would attach principally to the word, "voidable", though based on what at first glance might seem to be an indiscriminate use of either. One can not deny the possibility of an occasional careless usage or maintain that in every instance a concious awareness of the distinction has existed in the usage of court or bar. Nevertheless it seems incontestable that a definite distinction exists in the meaning of these words in the documents of the secular law. The distinction may indeed be regarded as based on point of view rather than on effect, that is, as deriving from a subjective attitude of the law rather than

[2] *Tractatus Canonicus de Matrimonio* (ed. 9., Typis Polyglottis Vaticanis, 1932), nn. 1222, 1223.

from an objective juridical effect. That is to say, a " voidable " marriage is a " void " marriage that is regarded as valid until the occurrence of some requisite juridical intervention; whereas the latter is not required when a marriage is held to be void.

The distinction undoubtedly has a historical basis, if not its sole foundation, in the decrees of Henry VIII reforming juridical procedure to harmonize with his ecclesiastical reforms. He established a distinction between canonical impediments and civil impediments, reserving competence as to the former to the ecclesiastical tribunals (Anglican, of course). At the same time, the ecclesiastical tribunals were forbidden to intervene in any manner with impediments classified as civil. One might be forgiven in surmising that this restriction of power may have been the chief motivating purpose behind the decree, inasmuch as *ligamen,* or the impediment of previous valid marriage, one that had embroiled him so annoyingly with the ecclesiastical courts, was withdrawn from the list of *canonical* impediments and classed as a civil impediment. Prior to that restriction, matrimonial competence in England lay with the ecclesiastical courts exclusively.[1] As a consequence of this restriction, ecclesiastical competence was recognized only as to the impediments of consanguinity, affinity, impotence, and, at that time, pre-contract (*sponsalia*). The practiced eye will recognize in these impediments those that are " voidable ".

The term " voidable " arose from the provision of the decree of Henry VIII that the civil tribunals could not pass sentence of nullity on marriages invalidated by the canonical impediments. They could only declare the marriage " voidable " and refer it to the ecclesiastical tribunal to be declared " void ". The civil impediments could be passed on at once by the civil tribunals. They were: bond of previous marriage, want of age, want of reason, and speaking more widely, duress, fraud, and error, the two latter as to the essential elements of the marital relation. It was for this reason that these impediments rendered a marriage " void ", even to the extent that the decree of the civil tribunal was not strictly required, as it is not required in these cases today, for further legal conduct based on the invalidity of the marriage.[2]

[1] Blackstone, *Commentaries,* I, 435.

[2] Alford, *Jus Matrimoniale Comparatum,* (Romae, 1938, n. 70); Lawyers' Reports Annotated, 1916, C 691.

Though the historic distinction is antiquated, and though ecclesiastical courts have no recognized function in the secular system of the States of the Union, it is precisely the so-called " canonical " impediments that render a marriage " voidable " but not " void ". Naturally, what is required now to render the marriage " void " is a declaration, not of the ecclesiastical tribunal, but of the competent secular tribunal. This has been the case in England also since 1857.

It is this historical basis that seems, in the case of the so-called " canonical " impediments, adequately to account for two subsidiary juridical corollaries, corollaries recognized in our system in the United States as well as in the past. The first is that the decree can be issued only on a direct proceeding challenging the validity of the marriage; not collaterally or incidentally in connection with some other principal legal issue. The second is that the direct challenge must be made during the lifetime of the spouses; else it is frozen as a merely " voidable " marriage that was never declared " void ".[3]

Statutes of various States have intervened to modify the juridical attitude towards the so-called " canonical " impediments. As to impotence, Alford records that statutes have made it a cause for divorce in thirty-four States and that it is not an invalidating impediment there, while in seventeen States it retains the characteristics of the " canonical " impediment. As to consanguinity, Alford believes that it has been made by statute a so-called " civil " impediment, rendering the marriage " void " without court intervention, though he cites a fair number of States where it is still regarded in the light of a so-called " canonical " impediment.[4]

A certain amount of confusion can be traced also to the common law position regarding the so-called " civil " impediment of age. It was regarded as " voidable " even prior to the distinction drawn by Henry VIII, if one is to believe commentators who wrote after his time. But that was a misnomer. For a marriage contracted between the ages of seven years and fourteen (in the case of the boy) or twelve (in case of the girl) was certainly held to be " void " to such an extent that on reaching the latter age, the one impeded could simply desert the other party perpetually without any legal action whatsoever. If he ratified the marriage, the common law extended the ratification to include the period when it was really

[3] Alford, *op. cit.*, n. 71; Lawyers' Reports Annotated, 1916, C 693.

[4] *Op. cit.*, nn. 139-142.

invalid.[5] This impediment of the common law was clearly derived from Decretal law: "Impuberes sunt inhabiles ad matrimonium si malitia non supplet aetatem."[6] Thus in States that by statute speak of this impediment as rendering a marriage "voidable", "voidable" should be understood in this sense. Alford indicates that the greater number of States regard it as such, but that all either by the words of the statute or by judicial precedent recognize ratification by the mere marital cohabitation after the requisite age has been attained. He cites Delaware as certainly regarding the marriage as valid and New York as possibly recognizing it as such, the former clearly ignoring the impediment and affording only a cause of divorce based on the insufficiency of age.[7]

A new source of doubt has been introduced by the statutes of certain States which have introduced variations of the invalidating factors of fraud and error as rendering the subsequent marriage "voidable", as in the case where the wife, without the ante-nuptial knowledge of the husband, was pregnant by another marriage.[8] It would seem that the specific terminology has been introduced to defeat any rights the woman might have acquired through the marriage, which, since she may be conceived to be without fault in the matter of the marriage itself, she would not lose. One would be justified in supposing that in denying the effects, the law would also deny the cause, that is, the marriage itself. But the disturbing expedient of the "*fictio iuris*" harassing constantly the interpreter who would proceed too logically in juridical matters bids one to be cautious. The law may desire only to pretend that there was no marriage when petitioned to do so by the party in error.

Here also enters the loose description so frequently encountered in reading of the exoneration of one party to a contract on detecting some fault or breach by the other party. The innocent party is said to have a right to rescind the contract. Certainly there is at once evident a contradiction in terms. One may rescind the consideration; but surely if valid, the contract remains, no matter how much disrespect has been shown it by the party at fault.

[5] Blackstone, *op. cit.*, I, 436.

[6] C. 9, X, *de desponsatione impuberum*, IV, 2.

[7] *Op. cit.*, nn. 87-92.

[8] Alford, *op. cit.*, n. 72.

In the case at issue, one might be entitled to rescind the consideration of the marriage contract: cohabitation, protection, and support; but it seems contradictory to assume that he could rescind the contract, if it was valid in the beginning. Perhaps the statutes in this matter mean only that the consideration can be withdrawn. In that case, the marriage itself would not be " voidable " or " void " but valid. But because legislators do not always make such fine distinctions, it could be argued on the other hand, that they meant " voidable " to be understood in the usual sense, that is, " void " on condition that a declaration of nullity by a competent court should intervene.

A clarification and simplification of the use of these terms is certainly desirable. When the ecclesiastical tribunal, because of a connection of issues, is confronted with a marriage contracted by unbaptized persons, it must be fully aware of the force of the impediments of the secular law by which the unbaptized parties were bound. One might suppose that even secular courts and practitioners would welcome some such attempt. Apologizing for any implicit presumption, one might cautiously suggest that the word " voidable " be discarded entirely, and that even the word " rescindible " be restricted to the consideration of a contract and not to the contract itself. The solution of the problem seems as simple as that. Perforce the legislator would be obliged to indicate whether the contract is valid or not valid *ab initio*. Granting its validity, he can of course proceed to other laws granting exemption, exoneration, or dispensation. As to marriage, divorce and all its incidents would easily fall under one of these modes of cancelling the effects of the contract.

SUPPLIED JURISDICTION FOR MARRIAGE

Below is a communication from the Sacred Congregation of the Sacraments received about a marriage case involving the lack of the pastor's license. The *species facti* is somewhat as follows: a marriage was performed before a visiting priest. The pastor of the parish did not attend the wedding which took place in the home of the bride. The pastor denies having delegated the priest who assisted officially, and the priest who assisted did not ask for license to perform the marriage because he thought it had been granted when the pastor was approached by the groom for permission to have the marriage performed by the outside priest. The question

presented to the Sacred Congregation was simply a request for information whether in such a case jurisdiction was supplied. The tenor of the latest questions which the Sacred Congregation wants answered, seems to indicate that there was no supplying of jurisdiction. It would not otherwise be so concerned about the mind of the pastor.

Miaskiewicz [1] argues against Coronata [2] that the more powerful extrinsic and intrinsic support is enjoyed by the view that *error communis* is not possible in the case of a particular delegation for assistance at marriage. He cites Carberry, Aertnys-Damen, Toso, Claeys-Bouuaert, Fabregas, Nevin, Woywod, Salvador and even Wernz, D'Annibale, and Gasparri, whom Coronata cites for the opposite view, Miaskiewicz maintaining that the latter three authors were referring to general delegation only. He cites also two decisions of the Sacred Roman Rota, issued in 1931, in which the tribunal did not even consider the possibility of common error even though every one present was convinced, including the priest, that the delegation was valid.[3]

The questions in the communication cited below would possibly indicate that evidence of a virtual delegation is being sought. In the knowledge of the pastor that a delegation was needed for validity and that the marriage was taking place there could be construed a virtual delegation. The " express " delegation required by Canon 1096, § 1, excludes tacit, presumptive, and habitual delegation, but not virtual. On the other hand, a virtual acceptance of the delegation is being sought in the knowledge of the assisting priest that delegation should be obtained. If he was completely ignorant of the necessity of such a delegation, he was acting on his initiative independently of any delegation. And even if delegation were *granted,* it would be as it were suspended in air awaiting acceptance.

[1] *Supplied Jurisdiction according to Canon 209,* n. 122, (The Catholic University of America Canon Law Studies, Washington, D. C., 1940), pp. 271-279.

[2] " L'errore commune nell' assistenza ad un matrimonio "—*Palestra del Clero,* IX (1930), 201 sqq.

[3] S.R.R., *Nullitas matrimonii,* 20 junii, 1931, *coram R.P.D. Arcturo Wynen,* dec. XXIX—*Decisiones,* XXIII (1931), 255-257; S.R.R., *Nullitas matrimonii,* 20 junii, 1931, *coram R.P.D. Francisco Parillo,* dec. XXVIII—*Decisiones,* XXIII (1931), 236-249.

The communication reads as follows:

" Per tramitem Apostolicae Delegationis recenter Sacrae huic Congregationi pervenit postulatio Officialis tribunalis . . . ut quaedam directivae imperitirentur pro solutione casus matrimonialis . . . .

" Perlectis interrogatoriis alligatis, S. hoc Dicasterium antequam quidquam in re decernat, necessarium ducit ut . . . , parochus ecclesiae S. Mariae in . . . interrogetur ' an ipse sciret, tempore celebrationis matrimonii in casu, quod ad illius validatem necessaria erat delegatio (seu licentia) ex parte sua danda Patri . . .' Iuxta tenorem responsionis huic interrogationi prudens iudex et alias addere poterit. Item exquirere iuvabit a P. . . . [sacerdote assistente] ' an ipse sciret necessarium fuisse ad matrimonii validitatem sibi comparare delegationem (seu licentiam) a P. . . . [parocho].'

" Quibus habitis notitiis, curet Amplitudo Tua omnia una cum Suo voto S. huic Congregationi mittere, quae quamprimum rescribere sataget.

" Occasionem interim nanciscor me profitendi.

Amplitudinis T. Rev. mae

Addic. in Dno."

An interfaith committee of clergymen and representatives of the Boston school system is being formed to provide a staggered schedule of released time for religious instruction for children in the public schools.

* * * *

After the Ministry of Public Education of Mexico had fined Professor Maria Concepcion Castro, head of the Instituto Franco-Ingles, one thousand pesos for the retaining in his school library of pedagogical books containing religious instruction, the Supreme Court ruled that the presence of books of a " religious scientific character " in a school can not be regarded as anything more than a means of illustration, and that neither Article 3 of the Constitution nor The Federal Education Law authorizes the setting up of a list of prohibited books.

* * * *

The Superior Council of Spain has established an Institute of Theology and a quarterly (Spanish Theological Review). It has established a Pontifical University at Salamanca with State endowment. Representatives of the hierarchy and authorities on religion have been appointed to the National Council of Education.

Decrees and Decisions

THE WORLD EMERGENCY

The Pope's Five Points

His Holiness, Pope Pius XII, spoke to a large throng in the Vatican at 12:30 on Christmas Eve. He began by condemning those who put the blame for the conflict upon the Church by saying that it had failed in its mission. He summed up the great achievements of the Church through the centuries and asked rhetorically whether it was this organization that was spoken of in this manner.

He then passed on to the "certain conditions" he said he had laid down as essential to an international order that would assure to all peoples an equitable and durable peace, rich in well being and prosperity. These are:

First, in the field of a new organization founded on moral principles, "There is no place for attacks against the liberty, integrity, and security of other nations, whatever may be the extent of their territories or their capacity for defense."

Second, "There is no place for oppression, open or covert, of cultural and linguistic groups of national minorities for the obstruction and tightening of their economic liberties or the abolition or limitation of their natural fecundity."

Third, "It is, however, in conformity with the principles of equity that the solution to a question so vital to the world economy should be arrived at methodically, and in easy stages, with the necessary guarantees, drawing useful lessons from the omissions and mistakes of the past."

Fourth, "There is no place . . . for a total war or for an endless recourse to armaments . . . Means appropriate and honorable for all must be established to ensure the sanctity of treaties."

Fifth, "There is no place for persecution of religion and the Church."

In the most important part of the Pope's speech he defeated the hope that he might support the "crusade" against bolshevism.

He said, " we are unable to explain why it is that in some parts of the world countless legislative dispositions bar the way to the message of the Christian faith while free and ample scope is given to a propaganda that opposes it, youth is withdrawn from the beneficent influence of the Christian family, alienated from the Church, educated in a spirit contrary to the teaching of Christ and imbued with ideas, maxims and practices which are anti-Christian, the work of the Church for the care of souls and for charitable enterprises is rendered arduous and less efficacious while its moral influence on individuals and on society is disregarded and rejected.

"All these forms of resolute opposition, far from being mitigated or eliminated in the course of the war, have on the contrary in many respects become even more marked.

" That all this, and even more, should be continued in the midst of the sufferings of the present time is a sad commentary on the spirit which animates the enemies of the Church in imposing upon the faithful, already bearing many heavy sacrifices, the irksome and the troublesome burden of a bitter anxiety which weighs upon their consciences.

" We love, and in this we call upon God to be our witness, we love with equal affection all peoples, without any exception whatsoever, and in order to avoid even the appearance of being moved by partisanship we have maintained hitherto the greatest reserve."

At the end of the speech the Pope bestowed the Papal Benediction on all humanity, particularly on those suffering from the horrors of the war.

In conformity with tradition the Pope received the members of the Sacred College of Cardinals in the Hall of the Consistory on that morning to receive their Christmas greetings. In reply to the message the Pope spoke with strong feeling of the sufferings of the world ravaged by a war " the equal of which humanity and the sun have never seen."

The Hierarchy's Pledge

The pledge was given the President by the Administrative Board of the National Catholic Welfare Conference in the name of the Bishops of the United States. The letter containing it was transmitted to President Roosevelt by Most Rev. Edward Mooney, Archbishop of Detroit and chairman of the N.C.W.C. Administrative Board.

The text of the letter to President Roosevelt follows:

" Dear Mr. President:

"As Chief Executive of our nation you have called upon the American people for full service and sacrifice in a war of defense against wanton aggression. Congress in grave and inspiring unity has spoken the will of a great nation determined to be free. We, the Catholic Bishops of the United States, spiritual leaders of more than twenty million Americans, wish to assure you, Mr. President, that we are keenly conscious of our responsibilities in the hour of our nation's testing. With a patriotism that is guided and sustained by the Christian virtues of faith, hope and charity, we will marshal the spiritual forces at our command to render secure our God-given blessings of freedom.

" We will do our full part in the national effort to transmute the impressive material and spiritual resources of our country into effective strength not for vengeance, but for the common good, not for national aggrandizement but for common security in a world in which individual human rights shall be safeguarded and the will to live on the part of all nations great or small shall be respected—a world in which the eternal principles of justice and charity shall prevail.

" The ultimate strength of a people is in the things of the spirit. The historic position of the Catholic Church in the United States gives us a tradition of devoted attachment to the ideals and institutions of government we are now called upon to defend. Our predecessors, in the Third Plenary Council of Baltimore, solemnly declared: ' We believe that our country's heroes were the instruments of the God of nations in establishing this home of freedom; to both the Almighty and to His instruments in the work, we look with grateful reverence; and to maintain the inheritance of freedom which they have left us, should it ever—which God forbid—be imperilled, our Catholic citizens will be found to stand forward, as one man, ready to pledge anew " their lives, their fortunes, and their sacred honor '." [1]

" Today in the face of the peril they feared, we re-affirm their solemn words. We give you, Mr. President, the pledge of our wholehearted co-operation in the difficult days that lie ahead. We will zealously fulfil our spiritual ministry in the sacred cause of our

[1] Pastoral Letter, *Acta et Decreta* (Baltimore, 1886), p. lxxv.

country's service. We place at your disposal in that service our institutions and their consecrated personnel. We will lead our priests and people in constant prayer that God may bear you up under the heavy burdens that weigh upon you, that He may guide you and all who share with you responsibility for the nation's governance and security, that He may strengthen us all to win a victory that will be a blessing not for our nation alone but for the whole world.

"The undersigned chairman of the Administrative Board, National Catholic Welfare Conference, authorized to forward this letter in the name of the Bishops of the United States, has the honor, Mr. President, to be, with sentiments of high consideration."

In addition to Archbishop Mooney, the members of the N.C.W.C. Administrative Board are Most Rev. Samuel A. Stritch, Archbishop of Chicago; Most Rev. Francis J. Spellman, Archbishop of New York; Most Rev. John T. McNicholas, O.P., Archbishop of Cincinnati; Most Rev. John Gregory Murray, Archbishop of St. Paul; Most Rev. John F. Noll, Bishop of Fort Wayne; Most Rev. John Mark Gannon, Bishop of Erie; Most Rev. Hugh C. Boyle, Bishop of Pittsburgh; Most Rev. John A. Duffy, Bishop of Buffalo, and Most Rev. Edwin V. O'Hara, Bishop of Kansas City.

The President's Reply

THE WHITE HOUSE
WASHINGTON

December 24, 1941

Dear Archbishop Mooney:

The letter which you forwarded under date of December 22nd as chairman of the Administrative Board, National Catholic Welfare Conference, and in the name of the Bishops of the United States, gives me strength and courage because it is a witness to that national unity so necessary in our all-out effort to win the war. Please convey to all of your brethren in the Episcopate an assurance of my heartfelt appreciation of the pledge of wholehearted cooperation in the difficult days that lie ahead. In those days we shall be glad to remember your patriotic action in placing your institutions and their consecrated personnel at the disposal of the Government.

We shall win this war and in victory we shall seek not vengeance but the establishment of an international order in which the spirit of Christ shall rule the hearts of men and nations.

Very sincerely yours,

/s/ Franklin D. Roosevelt

His Excellency
Most Reverend Edward Mooney,
Archbishop of Detroit,
Chairman, Administrative Board,
National Catholic Welfare Conference,
Detroit, Michigan

The Hierarchy's Statement on the Law of Nations

Sincere, honest, earnest acceptance by all the nations, large and small, of the Law of Nations is " the prime necessity for a righteous peace," the Bishops' Committee on the Pope's Peace Points declared in a statement issued at Washington on January third.

Charged with the obligation of making better and more widely known the peace principles set forth in the pronouncements of the Holy Father, the Bishops' Committee is composed of Most Rev. Samuel A. Stritch, Archbishop of Chicago; Most Rev. James H. Ryan, Bishop of Omaha, and Most Rev. Aloisius J. Muench, Bishop of Fargo. The committee was appointed by the Administrative Board of the National Catholic Welfare Conference, which was authorized to take this action at the annual meeting of the Archbishops and Bishops held in November.

The text of the statement of the Bishop's Committee follows:

" In his peace message of Christmas Eve our Holy Father, Pope Pius XII, elaborating in the midst of this terrible world catastrophe on what he had written in his first Encyclical Letter, captures the attention of honest minds in all the world. Daily as this calamity becomes more and more widespread and intense, it is clearer and clearer that the prime necessity for a righteous peace is the sincere, honest, earnest acceptance by all the nations, large and small, of the Law of Nations. This Law is basically nothing more than right and wrong in international relations. In our cultural heritage there is a wealth of precious thought on the Law of Nations, or, as it was called in other days, *jus gentium*, which should be studied now, diligently and profoundly, by all who want to make the victory

of our country in this war the beginning of sound world prosperity, a price well worth our sufferings and sacrifices.

" The Law of the Nations does not impose on any nation the surrender of legitimate sovereignty or the abandonment of its cultural resources. It envisions all nations living under the Law of the All-Just God and prizes righteousness above material aggrandizement, without however overlooking the temporal happiness of peoples. When hate and passion and pride are cast aside, human reason easily discovers the fundamental provisions of the Law of the Nations. With happily opportune reference our Holy Father calls to the leaders of men everywhere to make this Law the basis of their peace structure.

" Let it not be said that all this is mere idealism, something to be hoped for and yet something very impractical in this world of ugly, cruel international realities. Truth is the greatest reality, and to lose heart in the power of truth is to confess that all our noblest aspirations, world peace in righteousness, are futile, and human reason itself capable of nothing finer than doubt and helplessness. Let it never be said that that which is the desire and ardent hope of all good men is beyond realization. There was a time when the Law of Nations was in force in the Christian West and, although nations may have sinned against it, the conscience of right and wrong in international life was alive and alert.

" There is genuine optimism in the words of our Holy Father. He, through the clouds and terrors of this universal calamity, envisions a world in which sovereign peoples, proud of their heritages, will live together under the Law of Nations. Our own country is contending against strong, resourceful, clever enemies, precisely for a world order under the Law of the Nations. Without surrender of our sovereignty or injury to our free institutions, proud that we have been accused by an enemy nation of idealism, we are ready to make hard sacrifices and to give generously of our abundant resources to outlaw forever the domination of international life by brute force, lying propaganda, and privileged nationalisms. The things which the Pope points out as requisites for the peace, which our victory will establish, we place in our war aims and make the very prime reason for our hardships and sacrifices, disappointments and triumphs."

National Day of Prayer

Following is the text of the proclamation issued by President Franklin D. Roosevelt setting aside New Year's Day as a national day of prayer:

" The year 1941 has brought upon our nation a war of aggression by power dominated by arrogant rulers whose selfish purpose is to destroy free institutions. They would thereby take from the freedom-loving peoples of the earth the hard-won liberties gained over many centuries.

" The new year of 1942 calls for the courage and the resolution of old and young to help win a world struggle in order that we may preserve all we hold dear.

" We are confident in our devotion to our country, in our love of freedom, in our inheritance of courage. But our strength, as the strength of all men everywhere, is of greater avail as God upholds us.

" Therefore, I, Franklin D. Roosevelt, President of the United States of America, do hereby appoint the first day of the year 1942 as a day of prayer, of asking forgiveness for our shortcomings of the past, of consecration to the tasks of the present, of asking God's help in days to come.

" We need His guidance that this people may be humble in spirit but strong in the conviction of the right, steadfast to endure sacrifices and brave to achieve a victory of liberty and peace."

The Vatican and the Rio Conference

The representative of His Holiness Pope Pius XII in this country spoke out on February 14th to refute circulated secular press reports that the Vatican attempted to interfere in the political relations of the Western Hemisphere at the time of the Inter-American Conference at Rio de Janeiro.

" I have been directed by His Eminence, the Cardinal Secretary of State ", Archbishop Cicognani said, " to declare publicly that the assertions contained in the above-mentioned press releases are purely fictitious. The Holy See, however desirous of international peace and harmony, made no pronouncements whatsoever, either through diplomatic channels, or confidentially, before, during or after the Inter-American Conference of Rio de Janeiro.

" It has been asserted that the Holy Father in receiving the Spanish Ambassador, in the presence of South American diplomats, made insinuations against the conference of Rio de Janeiro. The fact is that the Holy Father never received the Spanish Ambassador together with South American or other diplomats. When the Spanish Ambassador was recently received in audience, His Holiness appropriately and in keeping with previous pronouncements on such occasions expressed the hope that Spain will always remain faithful to its Catholic traditions.

" It is known furthermore that foreign radio stations have been making use of the name of the Holy See in propaganda campaigns in South America. Naturally the Holy See cannot assume any responsibility whatsoever for broadcasts of this kind."

The secular press reports which the Apostolic Delegate cites were substantially the same as propaganda radio broadcasts emanating from both Berlin and Tokyo. Claiming as their basis " circles close to the Vatican ", these reports said that on the eve of the Rio de Janeiro conference the Vatican managed to make known its attitude toward it, and that the Vatican was strongly opposed to a direct or indirect involvement of South American countries in the world conflict, because it opposed extension of the war and for other specific reasons.

These reports also said that Pope Pius XII received the Spanish Ambassador and some South American diplomats in the same audience, and that from remarks addressed to the Spanish Ambassador the South American diplomats " got the impression " the Holy Father was referring to the whole of Latin America. Thus, the spurious reports continued, the Vatican, " nothwithstanding its attitude of strict neutrality with respect to the Rio de Janeiro Conference," had managed to emphasize its hostility to any direct extension of the current war.

As Archbishop Cicognani now brings out, no such audience as this was ever held.

Extraordinary Powers Granted Bishops

Fast and Abstinence

His Holiness Pope Pius XII, through a communication of the Sacred Congregation for Extraordinary Ecclesiastical Affairs, has granted to Ordinaries of every rite throughout the world the war-

time faculty of dispensing the faithful of their jurisdiction from the precepts of fast and abstinence.

The faculty, granted for the duration of the present war, is to be used according to the prudent judgment of the Ordinaries, and includes the power to dispense religious who are exempt from episcopal jurisdiction.

Two days—Ash Wednesday and Good Friday—for the Latin rite and days to be stated by the Ordinaries for other rites, are excepted from the dispensation.

In this faculty would seem obviously to be included the power to extend the workingmen's indult and the indult transferring the abstinence of Saturdays in Lent to Wednesdays, i. e., for the duration.

Eucharistic Fast

A communication to the Most Reverend Ordinaries from the Most Reverend Apostolic Delegate reads as follows:

"I take pleasure in informing Your Excellency that the Holy Father, in response to various petitions presented to Him, has graciously deigned to grant to the Most Reverend Bishops of the United States the faculty to permit the faithful of their dioceses, who are engaged in works of National Defense and must work after midnight, to receive Holy Communion without observing the prescribed fast. This faculty is given for the duration of the war and the following conditions must be observed:

1) These workers must abstain from solid food for at least four hours before receiving Holy Communion, and from liquids for at least one hour;

2) The liquids taken from midnight until one hour before Holy Communion must not be alcoholic;

3) This privilege must be used in such manner as to avoid 'scandalum et periculum admirationis'".

At least one Diocese is requiring that application be made in single cases and that answers to the following questions be inserted in the letter of application.

1) What is the nature of the work in which the petitioner is engaged?

2) What are the petitioner's hours of employment?

3) Is the petitioner permanently assigned to night work?

4) If the petitioner's hours of labor rotate in shifts, at what intervals and for how long a period is the petitioner obliged to the night shift?

5) When assigned to the night shift must the petitioner work every night? If not, what nights are free?

6) When assigned to night work, at what hour after midnight is the petitioner granted free time to take food or refreshment?

7) How often has the petitioner been in the habit of receiving Holy Communion, e. g., once a week, once a month, etc.?

Means of Communicating with the Holy See

A communication from the Most Reverend Apostolic Delegate to the Most Reverend Ordinaries reads as follows:

"In order to remedy the difficulties of correspondence with the Holy See, His Eminence the Cardinal Secretary of State has directed me to inform the Diocesan and Religious Ordinaries and Superiors of this country that in the present circumstances they may recur to the Holy See through this Apostolic Delegation, and so avail themselves of the facilities at our disposal. This office makes frequent use of radiograms, and also of the air-mails to Lisbon which, however, are not as regular as formerly.

"Upon the receipt of the petitions of Religious for faculties and dispensations, this Delegation will communicate with the Holy See by radiogram or by other channels, according to the possibilities and the circumstances. When a response has been received from the Holy See, the relative rescript will be issued by this Delegation, in accordance with instructions already given or to be given in particular cases.

"When requests are made for the renewal of a faculty, the original rescript should be presented with the petition for renewal.

"The Holy See hopes in this way to continue to correspond with the Religious in this country and to furnish every assistance to them.

"His Eminence further notes that, in virtue of the foregoing, the conditions for the use of Canon 81, of the Code of Canon Law, are not verified. Consequently the Ordinaries cannot make appeal to this Canon. If at a later date circumstances become even more difficult, the Holy See will not fail to give the necessary and opportune instructions.

"In communicating the foregoing directions of His Eminence, I am pleased to add that this Delegation will gladly lend all possible assistance in expediting the religious affairs of the nation."

The reference to the use of Canon 81 in the emergency seems not to have implications wider than the occasion which prompted it. In other words, since this statement of the scope of Canon 81 is not in any sense an authentic interpretation but only an administrative provision, it has no bearing on doctrinal interpretations of the extent of Canon 81. Even in the emergency, those doctrinal interpretations are not deprived of their validity, granted that circumstances precluding recourse to the Apostolic Delegate present a case which commentators would regard as justifying the use of the Canon. Certainly, the added difficulty arising out of the emergency would *a fortiori* place such a case within those contemplated in Canon 81. But the fact that communication with Rome is more difficult is definitely said in the letter of the Most Reverend Apostolic Delegate to be insufficient to justify the use of this Canon.

Vatican Bureau of Information on War Prisoners

Among the one hundred and fifty persons assisting in the work of the Information Bureau at the Secretariat of State are five former Papal Nuncios and Delegates.

The Bureau, under the direction of the Most Rev. Alexander Evereinoff, Bishop in Rome for the Byzantine Rite, and Rt. Rev. Msgr. Giovanni Battista Montini, Under-Secretary of State, is a general clearing house to make available to their families in all countries at war information about war prisoners in every part of the world.

In addition to the regular staff many officials of the Secretariat of State participate in the work, and auxiliary offices with volunteer workers are operated by the Union of the Women of Catholic Action, the Franciscan Missionary Sisters of Mary, the Sisters of St. Martha, the Sisters of Our Lady of Perpetual Help, the Daughters of Charity, the Sisters of the Blessed Sacrament and the Society of St. Paul.

The Bureau is further organized through the world through the Apostolic Delegations and Nunciatures where information on prisoners of war is gathered and transmitted to the Vatican by radio, cable and mail.

The Information Bureau was established at the outbreak of the present war, and was modeled on the Bureau set up under the Pontificate of Benedict XV to clear information on prisoners in the war of 1914-18.

From its establishment in September, 1939, until May, 1940, its activity was limited almost exclusively to the search for Polish families and individuals dispersed in consequence of the occupation of Poland and to the work of assisting refugees through the cooperation of the Papal Nunciatures in the countries bordering on Poland, namely, Hungary, Rumania, Lithuania and Latvia.

This year a highly organized network for inquiry and sifting of information was finally achieved through the Papal Nunciatures and Delegations, the Vicars Apostolic and mission centers. The Bureau is a general clearing house to match information thus gathered with requests received and, by every possible means of communication, to transmit replies in Italy and throughout the world.

Most Rev. Aloisi Masella Benedetto, Papal Nuncio to Brazil, was the only dignitary other than diplomats in attendance at the principal banquet of Rio de Janeiro Conference (The Third Inter-American Conference of Foreign Ministers). The Archbishop of Rio, Most Rev. Sebastiano Cardinal Leme da Silveira Cintra, occupied a place of honor at the opening of the Conference.

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Most Rev. Ildebrando Antonuitti, Apostolic Delegate to Canada, after visiting priests interned in prison camps, negotiated for their release to various religious houses in the Dominion.

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Most Rev. Bernard J. Sheil, D.D., Auxiliary Bishop of Chicago, has been named a consultant to the Secretary of the Treasury.

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Rev. Aloysius H. Schmitt, chaplain of the U.S.S. Oklahoma, died in the bombing of Pearl Harbor December 7.

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Regular, reserve, and auxiliary United States army and navy chaplains have been granted Special Scapular faculties, it was announced by Very Rev. Gabriel N. Pausback, American Assistant General of the Carmelites.

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Most Rev. Francis J. Spellman, D.D., Archbishop of New York, announced in mid-December that there are five hundred Catholic chaplains in the United States Army.

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933 additional chaplains have been authorized by the War Department. The age limit has been raised from forty to forty-five. About one-fourth will be Catholic according to previous ratios.

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The Holy Name Societies throughout the nation observed Sunday, March 8, as a day of prayer for the President and for a just peace.

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Provisions are being drafted under which clergymen in the United States who use automobiles in carrying on their ministry will be allowed to buy new tires.

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Gasoline permit cards are issued to clergymen in Canada.

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The Ministry of Home Security in England permits priests to attend sick calls and leave their duties as fire-watchers without being subject to prosecution.

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Rev. Aloysius Kuhar has been named by King Peter of Jugoslavia as Envoy Extraordinary and Minister Plenipotentiary to the President of the Polish Republic.

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Antanas Smetona, exiled President of Lithuania attended Solemn Mass at St. Alphonsus' Church, Baltimore, for the safety of the American troops and a just and lasting peace.

CANONICAL

Cautiones

Copy of radiogram sent by Monsignor Enrico Pucci from Citta Del Vaticano, February 5, 1942.

"To Holy Office was submitted doubt if caution required by Canon Law on Catholic education of sons born from mixed marriage refers only to sons to be born or also to sons already born previously to mixed marriage if they exist Stop Holy Office replied with decree approved by Pope saying caution refers only to sons to be born after mixed marriage but explains that intention is that couple to marry with mixed marriage must be seriously informed on their grave obligation by Divine Right, of educating in Catholic religion also sons born previously mixed marriage if they exist."

The text of the radiogram seems to indicate that even if the children born before the formal marriage were born to the identical couple about to be joined in wedlock with a dispensation, the *cautiones* apply only to the children to be born in the future. This seems the more probable due to the fact that the reference to the obligation arising by divine law as to children already born would

seem to touch exclusively children of the identical couple. If children of the non-Catholic party by a former union, there seems no greater obligation of converting the children than of converting the non-Catholic party. If children of the Catholic party by a former union, they are provided for by former *cautiones* (if the former marriage was mixed), or, in any event, by an obligation that bears only an incidental relation to the dispensation about to be issued and is independent of it.

As to a *sanatio,* the moral certainty of the Ordinary using his quinquennial faculties must extend to the children born of the union that is being sanated. This is required under the terms of the faculty.

Pontifical Work for Priestly Vocations

The text of the *Motu Proprio* of His Holiness Pope Pius XII establishing the Pontifical Work for Priestly Vocations is as follows:

" The Sacred Congregation of Seminaries and Universities has presented to us the opportunity to institute a central Work for Priestly Vocations which proposes: (a) to intensify among the faithful, by every means, but particularly through the lay groups at present existing in the diocese, the desire of promoting, safeguarding and assisting ecclesiastical vocations; (b) to disseminate the right knowledge of the dignity and of the necessity of the Catholic priesthood; (c) to unite the faithful of the whole world in communion of prayers and pious practices.

" We, therefore, *motu proprio* and with the fulness of our apostolic authority, will and decree erected in the Sacred Congregation of Seminaries and Universities a Work for Priestly Vocations, to which we give the title of " Pontifical ", with the faculty of co-ordinating the work of societies and individuals, and, at the same time, of extending the indulgences and spiritual favors granted or to be granted to all of its members.

" May this determination of ours have full force and effect, notwithstanding any difficulty to the contrary."

Monastic Devotions in Holy Week

A case was submitted to the Sacred Congregation of the Sacraments regarding the licitness of community exercises *coram Sanc-*

tissimo reserved in an ante-room on Holy Thursday and Good Friday. The answer was private. The case and the response were as follows.

In Instructione S. C. de Disciplina Sacramentorum data d. 26 Maii 1929 (*AAS*, XXI, [1929] p. 636) dicitur:

"Quoad asservationem Sacramenti Eucharistici ultimo triduo majoris hebdomadae, hoc adservatur ad Missam Praesanctificatorum celebrandam, et ad Communionem infirmis dandam. . . . b) Pro Communione infirmis danda, in Ecclesiis parochialibus, aliisque, a quibus accipi solet Sanctissima Eucharistia, servandae sunt aliquae particulae consecratae in pyxide, circa cujus repositionem haec serventur. Juxta mentem Rubricarum ista extra Ecclesiam esset reponenda, sc. prope Sacristiam, in loco opportuno et apto, ubi congrua cum reverentia adservandum erit Sacramentum, non tamen fidelium adorationi expositum, sed tantum communionem infirmis ministrandi causa custoditum . . ."

Et in pagina 638, n. 9, dicitur:

"Quoad asservandas sacras, particulas, infirmis ministrandas postremo hebdomadae sanctae triduo, Ordinarii locorum perspectam habeant Rubricarum et Decretorum Sacrae Congregationis Rituum intentionem; scientes easdem asservari non ad publicam venerationem, imo hanc prohiberi; tamen magnopere satagendum esse, ut Eucharistiae Sacramento, habita in primis ratione loci, non desit obsequium congruentis honoris et decoris."

Nunc quaeritur: Utrum in prohibitione venerationis supramemorata includatur etiam prohibitio adeundi locum, quo asservantur Sacrae Particulae, pro Communis Observantiae Religiosae actibus, uti oratione communi, ecc., in domo religiosa?

(Ex Congressu d. Julii 1932—R. Negative.)

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The fifth synod of the Diocese of Sioux City was held in November under the Presidency of Most Rev. Edmond Heelan, D.D. Rt. Rev. Msgr. T. M. Coghlan, Vicar General, was promoter; Rt. Rev. Msgr. Julius J. Berger, chancellor, was notary of the synod; and Rev. F. H. Greteman, J.C.L., was secretary.

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The 42nd synod of Milan was honored with a Brief of His Holiness, emphasizing the importance of synods, and sent to His Eminence Alfredo Ildefonso Cardinal Schuster, Archbishop of Milan.

SECULAR

Trial of Twentieth Century, Fox Corporation, and RKO Pictures, Inc., charged with violation of the Minnesota film block booking law was postponed recently in Ramsey County District Court of Minnesota on motion of defense counsel. The corporations are contesting the constitutionality of the law which permits exhibitors to reject twenty per cent of the films as granting too high a cancellation rate. The corporations had first sought to obtain an injunction preventing peace officers from enforcing the law, but the bill was dismissed.

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The law of 1939 authorizing free bus transportation for school children in Oklahoma attending parochial and private schools if they reside along the bus route has been held unconstitutional by the Supreme Court of the State. The court did not believe that the aid was to the children and not to the school, holding that if the funds appropriated were not in aid of the public schools they could not be taken from the school funds. Why it held that the parochial schools were thus threatened with State control it is difficult to ascertain. One hardly expected so much protective custody.

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Property of churches and other religious organizations may be seized and sold for non-payment of taxes under an opinion of the Supreme Court of the State of Michigan. Michigan churches are exempt from general property taxes, but the case before the court involved claims of the State Land Board for non-payment of special assessments for public improvements, from which the Supreme Court held them not to be exempt. The opinion was a reversal of a lower court which had enjoined the seizure and ordered restoration of the property. The Court further held that no minimum price for re-sale could be fixed.

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In a case carried before the Supreme Court of Ohio by the Synod of Ohio of the United Lutheran Church in America against a suburb of Columbus which by its administrative policy had managed to keep churches out of its boundaries for twenty-five years, the Court upheld the lower courts and followed the decision in Nevada in favor of the Catholic Bishop of Reno who won a similar suit against a zoning ordinance of Reno, which required the consent of three-fourths of the neighbors or a majority vote of city council for the granting of a permit.

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The ease with which a domicile is established for the purpose of divorce in Arkansas was criticized in an opinion by Chief Justice Griffin Smith, of the Supreme Court of the State.

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The Euthanasia Society of America is alleged by Brooklyn and Long Island legislators to be aiming at legalizing in New York State the putting to death of persons consenting to it.

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Reviews

REVIEWS OF PERIODICALS [1]

Philosophy of Law and Government

A. Beck, "Natural law and the reformation"—*The Clergy Review,* XXI (1941), 73-81 (summarizes the rôle of medieval canonists and theologians in the clarification of natural law, and shows how Grotius and his followers, under the influence of protestantism and humanism, distorted the concept of natural law, eliminating the basis of Divine reason and will, and went back to the pagan conception of the Stoics, preparing thus the ground for absolutism and pluralistic relativism).

* A. Toso, "S. Ambrosius Mediolanensis de bello ac pace, sacerdotio atque imperio"—*Ius Pontificium,* XX (1940), 65-74.

A. Beck, "The notion of sovereignty"—*The Month,* CLXXVII (1941), 430-435 (it is commonly said that the notion of sovereignty was alien to medieval thought, but the author shows that this is true only for the distorted notion of a sovereign who can make laws at his arbitrary will, while in scholastic philosophy the monarch is regarded as *legibus solutus* only with regard to the execution of justice).

O. H. Mott, "Utility as the norm of law"—*The New Scholasticism* XV (1941), 377-390 (a criticism of Dean R. Pound's Studies in the *Jubilee Law Lectures* of Catholic University: Pound's idea of universality is baseless, because the non-Catholic universe is a "multiverse" only; his notion of authority does not acknowledge the Divine lawmaker; he bases good faith on morals, law and religion without indicating who or what guarantees these social factors have; he treats social ends as ultimate ends; he insists that there is no return to Aristotle and Thomas, because he sees the medieval ideals of Law as responding only to the needs of that time, thus projecting his own relativism into the scholastic philosophers; in taking the present social order as the justifying principle of Law, Pound neglects the essential and rational difference between Law and morals, making utility the norm of Law).

W. Parsons, S.J., "The principle of order in politics"—*The New Scholasticism,* XVI (1942), 1-8 (gives some aspects of the interrelations between

[1] A list of articles in European periodicals, not available in this country under the present circumstances, has been kindly forwarded to the editors by the Rev. Dr. A. Stickler, of the Pontifical Salesian Athenaeum in Turin, Italy. In the present review, these articles are marked with an asterisk.

society and the individual and comes to the conclusion of a mutual responsibility of the individual and society under the principle of order where man is an end and a means at the same time and makes his contribution to the common good not as an individual, but as member of a group or groups).

G. C. Field, "Plato's political thought and its value today"—*Philosophy, the Journal of the British Institute of Philosophy,* XVI (1941), 227-241.

L. Brentano, S.J., "O cincoantenário da Encíclica 'Rerum Novarum' e os deveres sociais dos católicos"—*Revista Eclesiástica Brasileira,* I (1941), 127-137 (The fiftieth anniversary of the Encyclical "Rerum Novarum" and the social duties of Catholics; influence of the papal teaching on social legislation and organization in Brasil; program for future action).

A. d'Almeida Moraes, Jr., "Teoria fundamental do direito"—*Rev. Ecl. Bras.,* I (1941), 155-165 (Fundamental theory of Law: a review of modern philosophical trends, both Catholic and non-Catholic; the anthropocentric jurisprudence of the latter is responsible for the growth of the anti-Christian mystic of force, of blood, of labor).

W. Farrell, O.P., and M. Adler, "The theory of democracy"—*The Thomist,* III (1941), 297-449, IV (1942), 121-181 (to be continued).

General Principles of Canon Law

* A. Crnica, O.F.M., "De lacunis legum supplendis ad normam Codicis Iuris Canonici"—*Ius Pontificium,* XX (1940), 129-144.

* W. Mulder, "De iure particulari contra Codicem Iuris Canonici"—*Ius Pontificium,* XX (1940), 87-92.

H. Borges, "O canon 81"—*Revista Eclesiástica Brasileira,* I (1941), 588-594 (on general principles of dispensation).

Bishops and Clerics

* J. Gonzalez, "De archivio secreto episcoporum"—*Ius Pontificium,* XX (1940), 148-150.

* N. Hilling, "Welche geistlichen Doktoren dürfen einen Ring und ein Doktorbirett tragen?"—*Archiv für katholisches Kirchenrecht (AKKR),* CXX (1940), 228 f. (Which doctors among the clergy are allowed to wear a ring and a doctor's biretta?)

* G. Oesterle, O.S.B., "De iuribus parochorum iuxta Codicem Iuris Canonici"—*Pastor Bonus* (Rome), V (1941), 35-46, 137-144.

Religious

* A. Larraona, C.M.F., "Commentarium Codicis: Textus, historia redactionis et interpretatio can. 552"—*Commentarium pro Religiosis,* XXII (1941), 13-20, 71-82.

* A. Gutiérrez, "De gradibus libertatis et subiectionis religiosorum respectu ordinarii loci"—*Commentarium pro Religiosis,* XXII (1941), 28-37, 83 ff.

Laymen

R. Ortiz, "Aspeto jurídico da Ação Católica"—*Revista Eclesiástica Brasileira,* I (1941), 68-94 (Juridical aspect of Catholic Action: neither individual activities of laymen in the administration of sacraments, in the *magisterium,* in the administration of church goods, nor the associations of the faithful [book III, tit. XVIII] are Catholic Action; the concept of Catholic Action, as defined by Pius XI, is a novelty in Canon Law. The author, reviewing papal documents, statutes of the episcopate, concordats, synods and councils treating of Catholic Action, concludes that special canons on this subject could be compiled from these sources, as supplement to the Code, if the Church believes such general legislation to be timely. An appendix gives the statutes of Brazilian Catholic Action).

Sacraments

*I. Giannini, "La comunione dei fanciulli e il can. 854"—*Perfice Munus,* XVI (1941), 149-152 (The communion of children and can. 854).

M. Lucena, "Conmentários oportunos sobre o sigilo sacramental"—*Revista Eclesiástica Brasileira,* I (1941), 585-589 (lists useful commentaries on the seal of confession).

Marriage

*A. Lanza, "De fine primario matrimonii"—*Apollinaris,* XIII (1940), 218-264.

*P. Ciprotti, "Il matrimonio presunto"—*Archivio de Diritto Ecclesiastico,* II (1940), 446-465 (on putative marriage).

*P. Fedele, "Ancora in tema di *intentio* e *conditio contra matrimonii substantiam*"—*Arch. di Dir. Eccl.,* II (1940), 564-573 (Again, considering the question of intention and condition contrary to the substance of matrimony).

J. A. M. Quigley, "Impedimentos matrimoniales y dispensas: sumario de las leyes canonicas"—*Christus, Revista mensual* (Mexico), VI (1941), 947-953 (presents, in tabular form, the canonicai impediments of marriage and dispensations thereof, with special reference to the faculties of the Ordinaries and the Apostolic Delegate in Mexico).

J. P. Donovan, "An outdated interpretation of canon 1111"—*The Homiletic and Pastoral Review,* XLI (1941), 1169-1173 (on simple vows of chastity and the exercise of matrimonial rights without dispensation).

J. P. Kelly, "Rules of procedure in nullity cases"—*Homil. Past. Rev.,* XLII (1941), 161-169 (rejects Dr. Donovan's thesis—cf. The Jurist, I [1941], 355—of a presumption standing for only conditional consent among Protestants who have married in a place where divorce and conditional consent are a living tradition in common thought and practice. Dr. Kelly insists that the Code knows no presumptions for the invalidity of a marriage, and that, if the Holy Office admits in certain cases *praesumptiones hominis* together with other circumstances, as an indirect proof, this does not give rise to a *praesumptio iuris,* nor does it dispense from direct proof).

J. P. Donovan, "The Nesqually presumption still stands"—*Homil. Past. Rev.*, XLII (1942), 335-347 (defends his position against Dr. Kelly's criticism, by referring to the analogy of presumption of death, and to the responses and instructions of the Holy Office of April 6, 1843 [to the Apostolic Vicar of Oceania] and of January 24, 1877 [to the bishop of Nesqually]. He insists that these texts are still part of the Church's law, and that therefore a common and almost universal persuasion of dissolubility in heretic groups can—not must—also under the Code lead to a presumption for conditional consent, and that this can be established by an extrajudicial process).

*S. Sipos, "Forma celebrationis extraordinaria extra mortis periculum"—*Ius Pontificium*, XX (1940), 93-102.

*E. Cimavigli, "Vicario cooperatore e assistenza ai matrimoni"—*Il Monitore Ecclesiastico*, LXVI (1941), 22-25 (Parish assistant and assistance at marriages).

R. Bidagor, S.J., "Circa ignorantiam naturae matrimonii"—*Periodica de Re Morali, Canonica, Liturgica*, XXIX (1940), 269-289 discusses can. 1082, § 1 and its relation to Canon 1081, § 2, as to the formal object of marriage consent; the formal object of the marriage contract, the *ius utendi corporis in ordine ad actus per se aptos ad prolis generationem*, ought not to be specified, as Cappello holds, by adding the words *"per copulam exercendum"*; the knowledge of the parties must therefore not include the manner of begetting, and an error on this point is irrelevant. The two canons are to be interpreted in this way that can. 1081, § 2 describes scientifically the objective notion of consent, not the subjective realization by the parties; if only the lesser psychological requirements of can. 1082, § 1 are fulfilled, the objective notion comes true by itself. The opinion which requires at least a general knowledge of the *copula*, is contrary to the second canon).

"De cognitione aestimativa in consensu matrimoniali"—*Periodica* XXX (1941), 5-19 (reproduces the deliberations *in iure* of a recent Rota decision, *Nullitatis matrimonii, coram Wynen*, February 25, 1941, in which two important problems are discussed: (1) whether the mere knowledge of the matter of consent—*cognitio conceptualis*: *quid sit obiectum consensus*—is sufficient, or to which extent also a knowledge of the moral, social and juridical value of the consent—*cognitio aestimativa*: *quid valeat consensus*—is required; (2) whether "moral insanity"—*immoralitas constitutiva*—can be admitted as excluding the faculty of *cognitio aestimativa*. The decision states that the knowledge of the implied values ought to be only potential, not actual, and that "moral insanity" does not exist as a real psychic anomaly which would affect this potentiality).

*S. Romani, "Systema iuris canonici de matrimonio"—*Rassegna di Morale e Diritto*, VI (1940), 203-240.

G. Oesterle, "De morte praesumpta"—*Revista Eclesiástica Brasileira*, I (1941), 655-661: reprint from **Pastor Bonus* (Rome), V (1941), 84-93 (on the competence of the local ordinary to establish the presumptive death of a spouse; on the administrative way, the degree of certainty required, the means for obtaining moral certainty. Adds a list of pertinent documents of the Roman Curia since 1670).

Sacred Places and Times

* A. Blat, "Tradi ecclesiasticae sepulturae (can. 2339)"—*Ius Pontificium*, XX (1940), 151-153.

Ecclesiastical Magisterium

F. J. Connell, C.SS.R., "Catholics and 'Interfaith groups'"—*The Ecclesiastical Review*, CV (1941), 337-353 (the principle of charity towards non-Catholics—can. 1350, § 1—and the divinely granted, exclusive right of the Church to exist and to propagate must be balanced in practical application, in order that laudable efforts to overcome mistrust between religious groups may not lead to indifferentism. The discussions on moral and social problems in the "National Conference of Christians and Jews" involve often necessarily problems connected with the teaching of the Church. These meetings are not condemnable, but Catholics always must beware that no acknowledgment of objective equal rights of the other religions, or of the principle of separation of State and Church be made implicitly or explicitly on such occasions).

Frei Aleixo, O.F.M., "A censura dos livros"—*Revista Eclesiástica Brasileira*, I (1941), 578-585 (a summary of the canon law governing the censure of books).

Benefices

J. McCann, O.S.B., "Parishes served by religious"—*The Clergy Review*, XXI (1941), 82-87 (discusses the differences between the religious parish, united with a religious house, and the secular parish, entrusted to religious, holds that the regulations for the latter type are relatively meagre and vague).

Temporal Goods

J. D. Hannan, "Parochial Ownership"—*The Homiletic and Pastoral Review*, XLII (1941), 255-267. An analysis of the juridical entity known as the parish from the point of view of its proprietary rights, contrasting the canonical theory with the theory of American law, and emphasizing the independence of the parochial entity relative to the entity known as the diocese.

Procedure

* D. Lazzarato, "De processu extraordinario casus excepti"—*Ius Pontificium*, XX (1940), 103-128.

* D. Lazzarato, "La *causa culpabilis*, can. 1971"—*Revista del Diritto Matrimoniale Italiano e dei Rapporti di Famiglia*, VIII (1941), 72-74.

Penal Law

P. Rayanna, S.J., "De foro contentioso, can. 2737, § 1, n. 1"—*Promptuarium Canonico-liturgicum* (Ernakulam, India), XXXVII (1941), 251-257 (The term *forum contentiosum* is used in this canon differently from can. 1552, § 2, n. 1 and can. 990, § 1; it is to be interpreted here as *forum criminale*).

History of Canon Law

*J. M. Pinna, "De participatione in iure poenali canonico, studium historico-iuridicum"—*Apollinaris,* XIII (1940), 265-303 (Historical development of punishment for cooperation in Roman penal law, in the penal law of the *Leges Barbarorum.* To be continued).

H. E. Feine, "Studien zum langobardischen Eigenkirchenrecht"—*Zeitschrift der Savigny-Stiftung für Rechtsgeschichte,* Kanonistische Abteilung (*ZRG,* Kan. Abt.), XXX (1941), 1-95 (Researches on the law governing the foundation of churches in Tuscany and Lombardy during the late Antiquity and the early Middle Ages; the author illustrates the transition from the Roman canon law of foundation to the germanic concept of proprietary church, *Eigenkirche,* and particularly the langobardic abuse of church-ownership bestowed upon the individual priest. To be continued).

K. Lübeck, "Der Kardinalsornat der Fuldaer Aebte—*AKKR,* CXX (1940), 33-49 (on the privilege, granted by Pope John XV in 995 to the Abbot of Fulda, to celebrate Mass in dalmatic and sandals which were at that time the liturgical insignia of the Cardinals. This privilege was revoked and renewed several times by the following popes and occurs for the last time under Eugene III in 1151 whereafter it became obsolete).

H. W. Klewitz, "Die Krönung des Papstes"—*ZRG,* Kan. Abt., XXX (1941), 98-130 (on the origin of the papal crown and coronation rites: the byzantine headgear, *camelaucum,* introduced in Rome during the seventh century by the Greek popes, became the particularly shaped mitre of the popes; from it derived, in the eleventh century, a coniform cap sewed on a golden circle, the *phrygium,* or *aurifrigium,* to be used in solemn coronations, and from which later the *tiara* developed).

A. Gwynn, S.J., "Pope Gregory VII and the Irish Church"—*The Irish Ecclesiastical Record,* 5, LVIII (1941), 97-109.

A. Gwynn, S.J., "Lanfranc and the Irish Church"—*Irish Eccl. Rec.,* 5, LVIII (1941), 1-15.

Mrs. Mary Cheney, "The compromise of Avranches of 1172 and the spread of canon law in England"—*English Historical Review,* LVI (1941), 177-197 (rejects the theory of Z. N. Brooke who contended—cf. his *The English Church and the Papacy* [Cambridge: 1931]—that only after the murder of St. Thomas à Becket and the submission of King Henry II to the Pope in 1172, did papal decretal law penetrate into England. Mrs. Cheney shows that papal delegate jurisdiction in, and decretal letters to England were not so rare before the murder of Becket, and that the reason why decretals of the late 12th century are recorded in a far greater number lies in the history of the private decretal collections, not in any change of church policy. Also the practical effects of the compromise of Avranches ought not to be overrated, and, in conclusion, at least since 1140 in canon law England was not at all behind the rest of Europe).

J. Oswald, "Der organisatorische Aufbau des Bistums Passau im Mittelalter und in der Reformationszeit"—*ZRG,* Kan. Abt., XXX (1941), 131-164 (on

the territorial and jurisdictional organization of the diocese of Passau, Bavaria, during the Middle Ages and the Reformation).

W. Borah, "The collection of tithes in the Bishopric of Oaxaca during the sixteenth century"—*The Hispanic-American Historical Review,* XXI (1941), 336-409.

Margaret James, "The political importance of tithes in the English revolution, 1640-60"—*History* (London), XXVI (1941), 1-18.

J. J. Graham, "The development of the separation of Church and State in the United States of America"—*Records of the American Catholic Historical Society of Philadelphia,* LI (1940), 95-148 (continued, cf. The Jurist, I [1941], 357).

History of Canonical Sources and Science

"Priores Gratiani Adseclae"—*Ius Pontificium,* XX (1940), 80-86 (continued, cf. The Jurist, I [1941], 179).

F. Gillmann, "Petrus Brito und Martinus Zamorensis Glossatoren der Compilatio I"—*AKKR,* CXX (1940), 60-64 (publishes a few glosses, written early in the thirteenth century to the *Compilatio Prima,* by two half-forgotten canonists, Peter of Brittany and the Spaniard Martin of Zamora).

* F. Gillmann, "Tankreds oder Laurentius Hipanus' früherer Apparat zur Compilatio III?"—*AKKR,* CXX (1940), 201-224 (Tancred's or Laurentius Hispanus's early Apparatus to the Compilatio III?—a criticism of G. Post's previous articles on this complicated problem of authorship; cf. now Post's re-examination of the whole question in The Jurist, II [1942], 5-31).

N. Hilling, "Die Gesetzgebung des Papstes Pius XI."—*AKKR,* CXIX (1939), 309-351; CXX (1940), 4-32 and * p. 169-200 (The legislation of Pope Pius XI, a historical and systematical survey, arranged according to the system of the Code. The author concludes that this new layer of canon laws exceeds the law of the Code in quantity, and that the science of canon law has still to investigate the relations between these two classes of sources).

* N. Hilling, "Papst Pius XII. als kanonistischer Schriftsteller"—*AKKR,* CXX (1940), 225 f. (Pope Pius XII as canonical writer).

* N. Hilling, "Kardinal Gennari als Anreger der Kodifikation"—*AKKR,* CXX (1940), 227 f. (Cardinal Gennari first suggested the codification of canon law).

Concordats

* L. M. de Bernardis, "Le persone giuridiche ecclesiastiche nei più recenti concordati"—*Il Diritto Ecclesiastico e Rassegna di Diritto Matrimoniale,* LII (1941), 15-24 (on the ecclesiastic juridical persons in the most recent concordats).

* A. Perugini, "De novis conventionibus Lusitanis"—*Apollinaris,* XIII (1940), 205-217.

Ph. Aguirre, S.J., "Ecclesia et Status in Lusitania secundum recens concordatum"—*Periodica de Re Mor. Can. Liturg.*, XXIX (1940), 289-302 (analyzes the background and the clauses of the Portuguese concordat of May 7, 1940).

Particular Law

C. Santini, S. J., "O concílio plenário brasileiro"—*Revista Eclesiástica Brasileira,* I (1941), 14-32 (an analysis of the decrees of the first plenary council of Brasil [Rio de Janeiro, July 1-20, 1939], promulgated on September 7, 1940).

Mgr. J. Nabuco, "O direito litúrgico no concílio plenário brasileiro"—*Rev. Ecl. Bras.,* I (1941), 113-122 (The law on liturgy in the first plenary council of Brasil).

Abbot Th. Keller, O.S.B., "Proibe o concilio plenario brasileiro a missa dialogada?"—*Rev. Ecl. Bras.,* I (1941), 545-551 (The question whether the first plenary council of Brasil forbids the reciting of the Mass in dialogue form, is answered in the negative).

Annotations to Recent Roman Documents

Pius PP. XII, *Sermon* of December 24, 1940 (on the indispensable requirements for a New Order after the war.
—Ph. Aguirre—*Periodica,* XXX (1941), 80-89.

——, *Apostolic Constitution* of September 4, 1940 (on the reorganization of the hierarchy in the Portuguese colonies of Africa).
—L. Lopetegui—*Periodica,* XXX (1941), 95-102.

Holy Office, *Decree* of December 2, 1940 (on the killing of insane and physically defective persons by order of the public authority).
—*Periodica,* XXIX (1940), 345-354.

S. C. Consist., *Decree* of July, 1940 (on the jurisdiction of the military Ordinary in Italy).
—J. Lo Grasso—*Periodica,* XXIX (1940), 357-358.

S. C. Sacr., *Instruction* of June 29, 1941 (on ante-nuptial investigation).
—E. J. Mahoney—*The Clergy Review,* XXI (1941), 199-207.

——, *Instruction* of September 21, 1940 (to the Portuguese bishops, for the execution of the articles in the concordat regarding the celebration and the civil effects of marriage).
—Ph. Aguirre—*Periodica,* XXX (1941), 123-127.

S. C. Prop. Fide, *Decree* of October 29, 1939 (on the jurisdiction of the same Congregation over the missionary seminary of Yarumal in Colombia).
—L. Lotepegui—*Periodica,* XXIX (1940), 372-375.

——, *Decree* of April 9, 1940 (on the oath of missionaries in India, regarding the Malabar rites).
—P. M. d'Elia—*Periodica,* XXIX (1940), 376-379.

——, *Decennial Faculties* of January 1, 1941 (granted to the local Ordinaries subject to the same Congregation).

—J. J. Nevin—*The Australasian Catholic Record,* XVIII (1941), 190-198.

S. Paenit. Apost., *Response* of December 10, 1940 (on the general absolution to soldiers "*imminenti aut commisso proelio*").

—I. M. Restrepo—*Periodica,* XXX (1941), 135-141.

Pont. Comm. Cod. Can. Auth. Interpr., *Response* of April 29, 1940 (on the transition to another rite; on disparity of cult and can. 1099, § 2; and on the competent tribunal in can. 1572, § 2).

—Ae. Hermann, J. Creusen, R. Bidagor—*Periodica,* XXIX (1940), 388-394.

——, *Response* of July 8, 1940 (on the competence of the S. Congregation of Sacraments in causes of nullity of marriage).

—* J. Haring—*AKKR,* CXX (1940), 230 ff.

—* Spectator—*Ius Pontificium,* XX (1940), 75-79.

—* J. Haring—*Ius. Pont.,* XX (1940), 145-147.

— R. Bidagor—*Periodica,* XXX (1941), 51-58.

S. R. Rota, recent decisions reviewed:

marriage cases: * P. Fedele—*Archivio di Diritto Ecclesiastico,* II (1940), 564-573.

penal cases: * P. Ciprotti—*Arch. Dir. Eccl.,* II (1940), 583-588.

Cases and Consultations

Burial of priests in churches, can. 1205.

—J. J. Nevin—*The Australasian Catholic Record,* XVIII (1941), 198.

Renouncing a parish (p. 50: T. C. Delgado).
Pauline privilege (p. 53: L. Vega).
Stipends of masses for the death (p. 141: E. Iglesias).
Dispensation from abstinence (p. 142: L. Vega).
Publication of court sentences (p. 142: L. Vega).
Assistance at marriage (pp. 233, 297: J. S. Sánchez).
Absolutio complicis (p. 303: L. Vega).
Place of marriage (p. 391: J. S. Sánchez).
Communion of the dangerously ill (p. 393: J. S. Sánchez).
Authorization to build a church (p. 397: G. Aguilar).
Right to attack a marriage (p. 398: G. Aguilar).
Error qualitatis and marriage (p. 477: G. Aguilar).
Confessors of women religious (p. 479: J. S. Sánchez; p. 695: L. Vega).
Assistance at marriage in danger of death (p. 591: J. S. Sánchez).
Confession prescribed by superior (p. 593: J. S. Sánchez).
Marriage between Catholics of different rites (p. 689: J. S. Sánchez).
Dispensation from general canon law (p. 692: G. Aguilar).
Marriage fees (p. 779: J. S. Sánchez).
Sacramental absolution (p. 781: J. S. Sánchez).
Baptism of adults (p. 785: G. Aguilar).
Refusal of pastor to assist at a marriage (p. 889: J. S. Sánchez, C. Marquette).

—*Christus, Revista mensual* (Mexico), VI (1941).

Omission of ante-nuptial investigation (p. 77: J. S. Sánchez).
Clause "exclusis monialibus" in faculties of confessors (p. 80: I. deAliste).
—*Christus,* VII (1942).

Censure and general absolution during air raids (p. 49).
Re-incurred censure (p. 50).
Time for discharging Mass obligations (p. 50).
Necessity for installation for new parish priest (p. 51).
Missa pro populo, stipends (p. 110).
Valid eucharistic matter (p. 111).
Reconciliation of bombed church (p. 116).
Confessional faculties (p. 237).
Just war theory (p. 238).
Civilians attending a military mass (p. 241).
—E. J. Mahoney—*The Clergy Review,* XXI (1941).

Missa pro populo (pp. 305, 325).
Apostolic indult necessary for bishop to require stipends received for second Masses (p. 306).
Divorce without authorization of the Ordinary (p. 410).
Competens iudex loci in can. 1964 (p. 413).
Concerning indulgences (pp. 414, 415).
Ecclesiastical prohibition of books (p. 416).
Period of postulancy in can. 539, § 1 (p. 418).
Funeral services in convent by chaplain (p. 420).
Weekly confession of religious (p. 422).
—*The Ecclesiastical Review,* CV (1941).

Bination of Masses for the bishop's intention (p. 1216).
Annual dispensation from hearing Mass? (p. 1217).
Denial of burial (p. 1217).
—J. P. Donovan—*The Homiletic and Pastoral Review,* XLI (1941).

Concerning indulgences (p. 68).
Soldiers and sailors dispensed from fast and abstinence (p. 70).
Assistance at marriage (p. 71).
Stipend for binated Mass in hospital (p. 189).
Exemption of hospital from parish jurisdiction (p. 189).
"Bona" of divided parishes—Trial of nullity—marriage based on fraudulent promises (p. 189).
Baptismal certificates (p. 191).
Mass stipends and local customs (p. 192).
Impediment of public honesty (p. 193).
Satisfying a bequest of Mass stipends (p. 286).
—J. P. Donovan—*Homil. Past. Rev.,* XLII (1941).

Morality of reprisals in war (p. 367: J. McCarthy).
Anointing after apparent death (p. 369: J. McCarthy).

Administration of Holy Communion in a private house (p. 372: J. McCarthy).
Funeral offerings, Interpretation of Armagh provincial statute (p. 376: M. J. Fallon).
Renewal of consent in validating a putative marriage (p. 380: M. J. Fallon).

—*The Irish Ecclesiastical Record,* 5, LVII (1941).

Practica quaedam applicatio can. 1099, § 1.

—P. Beijersbergen—*Periodica,* XXX (1941), 46-51.

De simplici convalidatione matrimonii (pp. 267-270).
De matrimonio coniugum ex infidelitate conversorum (pp. 157-161).
De matrimonio quod a forma ecclesiae eximitur (pp. 208-213).
Matrimonium per procuratorem inter duas mulieres (p. 219).

—*Promptuarium Canonico-liturgicum* (Ernakulam, India), XXXVII (1941).

Competence for ordaining a secularized religious (p. 602: Frei Aleixo).
Occasional confessor of women religious (p. 603: T. B.).
Impediment of crime (p. 609: Frei Aleixo).
Extreme unction (p. 611: H. Borges).

—*Revista Eclesiástica Brasileira,* I (1941).

Chronicle

GENERAL

On December 4, Their Eminences Tommaso Cardinal Boggiani, Alessio Cardinal Ascalesi and Adolf Cardinal Bertram, celebrated the twenty-fifth anniversary of their elevation to the Sacred College. Cardinal Boggiani died February 26 at the age of seventy-nine.

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On December 10th, His Eminence Pietro Cardinal Fumasoni-Biondi, Prefect of the Sacred Congregation for the Propagation of the Faith, observed the twenty-fifth anniversary of his episcopal consecration.

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On December 7th the Most Reverend Samuel A. Stritch, D.D., Archbishop of Chicago, observed the twentieth anniversary of his consecration. A priest thirty-one years, he became Bishop of Toledo in 1921 and later Archbishop of Milwaukee, whence he was transferred to Chicago two years ago.

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On December 29-31, the American Catholic Historical Association met in Chicago in its twenty-second annual convention. It was addressed by Most Rev. Samuel A. Stritch, D.D., Archbishop of Chicago, and by Dr. Carlton J. H. Hayes, professor of history at Columbia University.

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On December 29, 30, the American Catholic Philosophical Association held its seventeenth annual convention. Addresses were made by the president, Rt. Rev. Msgr. Fulton J. Sheen and by Walter Lippman. The new president is Rev. Joseph Schabert, St. Thomas' College, St. Paul, Minnesota.

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"The Challenge of Social Change" was the theme of the fourth annual convention of the American Catholic Sociological Society held in New York at the Hotel Astor, December 28-30. Walter L. Willigan was elected president.

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A national association to be known as the The American Catholic Economic Society is being formed at Marquette University.

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Roscoe Pound, dean emeritus of the Harvard Law School, delivered a series of lectures at the University of Notre Dame, January 22-26, on "The Revival of the Natural Law".

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January 16 marked the centenary of the profession of the first Redemptorist in the United States, Bishop John Nepomucene Neumann.

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The Catholic University University of Peru has observed the twenty-fifth anniversary of its founding and was honored in the presence of Most Rev. Fernando Cento, Papal Nuncio to Peru; the President and Senora de Prado; and Most Rev. Pedro Pascual Farfan, Archbishop of Lima.

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90 years ago Pope Pius IX donated a block of marble to the Washington Monument, then under construction, taken from the ancient Temple of Peace and inscribed, "Rome to America".

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Most Rev. Leopoldo Ruiz y Flores, Archbishop of Morelia and former Apostolic Delegate to Mexico, three times exiled from his native land when anti-religious forces were in control, died December 12th at the age of 76, a priest fifty-four years and a bishop forty-one.

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Very Rev. Edward D. O'Connell, S.T.L., Ph.D., appointed Rector of St. Mary of the Mount Seminary, Emmitsburg, Md., in September, from St. Anthony's Parish, Utica, N. Y., died February 8. Rt. Rev. Msgr. John L. Sheridan celebrated a solemn Mass of Requiem on the following morning in the Mount Chapel.

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Most Rev. Patrick McKenna, Bishop of Clogher, Ireland, died February 14, at the age of seventy-four.

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On February 21, Rt. Rev. Bernard Murphy, O.S.B., Abbot of St. Benedict's Abbey, Mt. Angel, Oregon, was buried. He was sixty-seven years old.

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Most Rev. Daniel Foley, Bishop of Ballarat, and Most Rev. Claude Chanrion, former Vicar Apostolic of New Caledonia, died recently.

UNIVERSITY

Vice President Wallace, Chief Justice Stone and six Justices of the Supreme Court were among the notables who attended the annual "Red Mass" celebrated January 18th in the Shrine of the Immaculate Conception by the Right Reverend Vice Rector. The sermon was preached by Rev. Robert J. White, J.C.D. It is a solemn votive Mass of the Holy Ghost signalizing the formal opening of Congress and the Supreme Court.

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The Most Reverend Rector delivered the invocation on Christmas Eve at the lighting of the national community Christmas tree on the south grounds of the White House.

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On January 25 the Most Reverend Rector preached in the National Shrine of the Immaculate Conception on the occasion of the Pontifical Mass celebrated by Most Rev. Michael J. Curley, D.D., Archbishop of Baltimore-Washington, under the auspices of the Society of St. Peter the Apostle for Native Clergy.

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Rev. William A. Galvin (J.C.L., 1941) has been appointed Secretary and Notary of the Diocesan Tribunal of the Diocese of Fall River.

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The annual retreat of the clerical students of Trinity Hall was conducted by Rev. Mateo Crowley, SS.CC., from Ash Wednesday to the first Sunday of Lent. The same week-end was marked by the retreat of the lay students conducted by Rev. Louis M. O'Leary, O.P. The latter retreat ended with a communion breakfast at which the principal speaker was Honorable Martin J. Kennedy, Representative to Congress from New York.

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Ordination ceremonies for the promotion of seminarians studying at the University seminary were held December 17-19, orders being conferred by the Most Reverend Rector and by Most Rev. John M. McNamara, D.D., Auxiliary Bishop of Baltimore-Washington.

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On March 7th, the faculty and student body attended solemn Mass in the National Shrine of the Immaculate Conception to honor St. Thomas Aquinas, the patron of Theology.

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On March 9th, the faculty and student body attended solemn anniversary Mass in the National Shrine of the Immaculate Conception celebrated for the repose of the soul of Most Rev. Thomas J. Shahan, D.D.

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On March 12th, the faculty and student body attended solemn Mass celebrated in the presence of the Most Rev. Apostolic Delegate by Rt. Rev. Egidio Vanozzi, Auditor of the Apostolic Delegation, in honor of the third anniversary of the coronation of His Holiness, Pope Pius XII. The sermon was preached by Rt. Rev. Msgr. Michael J. Ready, Executive Secretary of the National Catholic Welfare Conference.

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Rev. Robert J. White, J.C.D., dean of the School of Law, was named head of the District Alien Enemy Board in December. On March 7, he was called to active duty with the Navy with the rank of Commander. He became dean of the School of Law in 1937, after teaching six years in the School.

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Rev. George Johnson, Ph.D., secretary general of the National Catholic Educational Association and director of the Department of Education of the National Catholic Welfare Conference, was named to membership in the Office of Education Wartime Commission, the duty of which is to adjust the needs of government programs with school needs. He has also been named

to the Emergency Cooperating Committee for Children and Youth, a subcommittee of the National Citizens Committee of the White House Conference on Children in a Democracy.

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Rev. Gerald F. Dillon, Dean of Men, has been appointed Chaplain in the United States Navy. He has tendered a farewell dinner on February 26th. Rev. Edgar A. Lang, O.S.B., Ph.D., succeeds him as acting dean.

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On February 4, the faculty and student body attended a solemn Mass for Rev. Dr. Adolphe A. Vaschalde, who died in Toronto, January 31. He had taught for thirty years in the Graduate School of Arts and Sciences, specializing in Syriac and Coptic. He retired in 1940.

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On December 5, a Seminar was conducted under the auspices of the School of Law on the subject "Priorities and the Requisition of Private Property". The speakers were Milton Katz, Esq., Assistant General Counsel for Priorities OPM; Henry W. Fowler, Esq., Assistant General Counsel for Civilian Supply Division, OPM; John H. Ohly, Special Assistant to the Undersecretary of War; and M. Quinn Shaughnessy, Esq., Former Chief of Fuel Section OPM and Assistant Professor of Law, The Catholic University of America. Ganson Purcell, Esq., Commissioner, Securities and Exchange Commission, presided.

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Free courses in Materials Testing, Metallurgy of Iron and Steel, Electrical Engineering, Mathematics and Intermediate Machine Design, sponsored by the Office of Education, are being offered in cooperation with the defense program to students who have had two years of college work in engineering colleges or its equivalent.

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Very Rev. James A. Hughes (J.C.D. 1937), appointed Papal Chamberlain in 1940 became Chancellor of the Diocese of Newark during the Summer of 1941.

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A series of lectures on Ibero-American culture is being given in McMahon Hall Sundays by the Ibero-American Institute of the University.

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Fifteen two-hour lectures on phases of the Government's problems in war time comprise a special graduate course in politics at the University which began on Monday, February 2nd, to continue each Monday afternoon through May 18th. Dr. Herbert Wright, head of the Department of Politics of the University, is in charge of the new course, with the lecturers being recognized experts from within and outside the Government service.

Dr. Wright and Dr. Robert H. Connery, associate professor of politics, and director of the University's Commission on American Citizenship, outlined the course of lectures at the first session. The subjects and speakers in the full series include—February 9, "Governmental Control of Raw Materials in War Time," Colonel George Stuart Brady, materials consultant, War Production

Board; February 16, "Changing Military Techniques in War Time," Colonel Elbridge Colby, National Guard Bureau, War Department; February 23, "Lessons from the World War of 1914-1918," Dr. Schuyler C. Wallace, Professor of Political Science, Columbia University; March 2, "Problems of Democratic Government in War Time," Dr. Lindsay Rogers, Executive Officer of the Department of Public Law and Government, Columbia University; March 9, "Cultural Relations in War Time," Dr. Robert G. Caldwell, Dean of Humanities, Massachusetts Institute of Technology; March 16, "Latin American Relations in War Time," Dr. Constantine E. McGuire of Washington, D. C., Consulting Economist; March 23, "Far Eastern Relations in War Time: I. From the Point of View of the United States," Dr. William C. Johnstone, Jr., Dean of the Junior College, George Washington University; March 30, "Far Eastern Relations in War Time: II. From the Point of View of the Nations of the Far East," Dr. Taraknath Das, Lecturer on History and International Relations, College of the City of New York; April 13, "Governmental Censorship in War Time," Byron Price, Director of Censorship; April 20, "Constitutional Problems Affecting the Executive in War Time," Dr. Edward S. Corwin, Professor of Jurisprudence, Princeton University; April 27, "Constitutional Problems Affecting Civil Rights in War Time," Dr. Robert E. Cushman, head of the Department of Government, Cornell University; May 4, "Labor Problems in War Time," Rt. Rev. Msgr. Francis J. Haas, Dean of the School of Social Science, The Catholic University; May 11, "Legislative Problems in War Time," Senator Elbert D. Thomas of Utah, Chairman of the Committee on Education and Labor; and May 18, "Administrative Problems in War Time," Dr. Louis D. Brownlow, Director of the Public Administration Clearing House, Chicago.

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Eleven students of the School of Architecture were awarded mention by the Beaux Arts Institute of Design for their work in architectural design in the annual Class "B" competition. Roger Allard received a first mention, which advances him to Class "A" work in the School.

DIGNITIES

On January 6th, the Most Rev. Apostolic Delegate officiated at the ceremonies marking the formal erection of the new Archdiocese of Denver and the installation of Most Rev. Urban J. Vehr, D.D., as the first Archbishop. The ceremonies took place in the Cathedral of the Immaculate Conception. Most Rev. John T. McNicholas, O.P., Archbishop of Cincinnati.

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On February 24th, Most Rev. Joseph C. Willging, D.D., was consecrated first Bishop of Pueblo by the Most Reverend Apostolic Delegate. The co-consecrating bishops were Most Rev. Henry P. Rohlman, D.D., Bishop of Davenport, and Most Rev. Joseph M. Gilmore, D.D., Bishop of Helena. The sermon was preached by Most Rev. Duane G. Hunt, D.D., Bishop of Salt Lake. The ceremonies took place in St. Helena's Cathedral, Helena, Montana.

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Most Rev. William P. O'Connor, D.D., Ph.D., was consecrated Bishop of Superior on March 7, by Most Rev. Moses Kiley, D.D., Archbishop of Milwaukee. The co-consecrating bishops were Most Rev. Aloisius J. Muench, D.D., Bishop of Fargo, and Most Rev. Vincent J. Ryan, D.D., Bishop of Bismarck. The new bishop was chaplain at the front in World War I. He received his Ph.D. at The Catholic University of America in 1921.

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In mid-February, Most Rev. Sidney M. Metzger, D.D., formerly Auxiliary Bishop of Santa Fe, was installed as Coadjutor of El Paso with right of succession at a Pontifical Mass in St. Patrick's Cathedral. He was presented to the people by Most Rev. Rudolph A. Gerken, D.D., Archbishop of Santa Fe. The sermon was delivered by Most Rev. Mariano S. Garriga, D.D., Coadjutor Bishop of Corpus Christi.

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Most Rev. Peter W. Bartholome was consecrated Coadjutor Bishop of St. Cloud on March 3rd at ceremonies in the Chapel of the Sisters of St. Francis at St. Mary's Hospital, Rochester, Minnesota. The Most Reverend Apostolic Delegate was consecrator; the co-consecrating bishops were Most Rev. Joseph F. Busch, D.D., Bishop of St. Cloud, and Most Rev. John H. Peschges, D.D., Bishop of Crookston. The sermon was preached by Most Rev. John Gregory Murray, D.D., Archbishop of St. Paul.

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On February 24th Most Rev. Edward G. Hettinger, D.D., was consecrated Titular Bishop of Teos and first Auxiliary Bishop of Columbus by Most Rev. James J. Hartley, D.D., Bishop of Columbus, in St. Joseph's Cathedral. The co-consecrating bishops were Most Rev. Francis W. Howard, D.D., Bishop of Covington, and Most Rev. George J. Rehring, D.D., Auxiliary Bishop of Cincinnati. The sermon was preached by Most Rev. John T. McNicholas, O.P., Archbishop of Cincinnati.

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Most Rev. Denis Moynihan, D.D., was consecrated Bishop of Ross in the Pro-cathedral, Skibbereen. The co-consecrating bishops were Bishop Roche of Cloyne, Most Rev. Jeremiah Kinane, Bishop of Waterford and Lismore.

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Most Rev. Jeremiah Kinane, Bishop of Waterford and Lismore, Ireland, has been named Coadjutor with right of succession to Most Rev. John Harty, Archbishop of Cashel, Ireland.

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Rev. Rembert Kowalski, O.F.M., missioner in China since 1926, ordained to the priesthood in 1911, has been named Vicar Apostolic of Wuchang, China.

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Most Rev. Enrique Pia y Daniel, Bishop of Salamanca, has been named Archbishop of Toledo and Primate of Spain. Born in 1876, he was ordained in 1900, named Bishop of Avila in 1917, and Bishop of Salamanca in 1935.

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Most Rev. Luis M. Altamirano y Bulnes, succeeds to the See of Morelia, Mexico.

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Rt. Rev. Manuel Arteaga y Belancourt, Vicar Capitular of the Archdiocese, has been named Archbishop of Havana.

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Rev. Dr. Emilio Diaz, rector of St. Christopher's Seminary, Havana, has been named Bishop of Pinar del Rio, Cuba.

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Most Rev. Rudolph de Oliveira Penna, Bishop of Barro do Rio Grande, Brazil, has been transferred to the See of Valencia, Brazil.

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Monsignor Ernesto di Paula, Vicar General of Sao Paulo, has been named Bishop of Jacarezinho, Brazil.

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Monsignor Jose M. Cuenco, Vicar General of Cebu, has been appointed Titular Bishop of Emerica and Auxiliary Bishop of Jaro, Philippine Islands.

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Rt. Rev. Msgr. Paolo Savino, pro-president since 1937 of the Pontifical Ecclesiastical Academy has been appointed president by His Holiness, Pope Pius XII, to succeed Most Rev. Giovanni Maria Zonghi, Titular Bishop of Colossae, who died recently at the age of 94.

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The Archbishop of Birmingham, Most Rev. Thomas Williams, has been named Assistant at the Pontifical Throne, in honor of the centenary of the Birmingham Cathedral.

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Harold Tittmann has taken up residence in Vatican City as Charge d'Affaires of the mission established at the Vatican by President Roosevelt with the appointment of Myron C. Taylor as his personal representative to the Holy See.

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Msgr. William R. Arnold, Chief of Chaplains of the United States Army, was nominated on December 15th by President Roosevelt for temporary promotion to the rank of Brigadier General. He has also been promoted from Papal Chamberlain to Domestic Prelate and nominated for a second four year term as Chief of Chaplains.

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Jacques Maritain is named recipient of the Christian Culture Award, conferred annually by Assumption College, Windsor, Ontario.

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On November 30, Dr. Harlow Shapley, director of the Harvard Observatory, Cambridge, Massachusetts, received the Pope Pius XI Prize of 50,000 lire for his studies in astronomy, it was announced at the opening session of the academic year of the Pontifical Academy of Science, Vatican City.

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Rt. Rev. Augustine Danglmayr has been named Vicar General of Dallas, succeeding the late Rt. Rev. Bernard H. Diamond, V.G., P.A., who was buried in December.

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Rt. Rev. Msgr. John J. Sonefeld, Ph.D., S.T.D., Officialis and Chancellor of Saginaw has been named a Domestic Prelate.

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Rev. Joseph J. Tennant, professor of Sacred Scripture at Immaculate Conception Seminary, Long Island, has been appointed Vice Chancellor of the Military Ordinariate.

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Justice Severin Letourneau, for the past twenty years a member of the Quebec Court of Appeals, has been named Chief Justice of Quebec. He is an alumnus of the Law School of Montreal University.

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Rt. Rev. Thomas P. Larkin and Rt. Rev. Joseph A. O'Connor were invested with the robes of Domestic Prelates by Most Rev. Stephen J. Donahue, Auxiliary Bishop of New York.

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The following priests of the Diocese of Springfield, Illinois, have been honored by the Holy See: Rt. Rev. Michael A. Tarrent, Chancellor and Vicar General, has been named Prothonotary Apostolic; Rev. David L. Scully, director of the Society for the Propagation of the Faith, has been named Domestic Prelate; and the following have been named Papal Chamberlain: Rev. John B. Franz, Rev. Louis Hufker, and Rev. Henry B. Schnelten, diocesan director of the Catholic Rural Life Conference.

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The following priests of the Diocese of Ogdensburg have been named Domestic Prelates: Monsignors John M. Hogan, J. Domina Brault, Edmund Brown, Timothy Holland, Francis Kenny, Clarence Kitts, Hugh O'Reilly, and John J. Benton. Rev. Louis D. Berube was made Papal Chamberlain.

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"The Sign" has established the Las Americas medals, to be conferred annually on promoters of inter-American cooperation. They were bestowed this year at the meeting of The Committee on Cultural Relations with Ibero-America held in Miami on Senora Ana Rosa Martinez de Guerrero, prominent Catholic charity sponsor of Argentina, and Dr. Herbert E. Bolton, distinguished non-Catholic historian of the University of California. The meeting was attended by the Most Reverend Apostolic Delegate; Hon. Sumner Welles, Undersecretary of State; Hon. Joseph W. McCormack, majority leader of the House of Representatives; and M. de Freyre y Santander, Peruvian ambassador.

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THE RICCOBONO SEMINAR OF ROMAN LAW IN AMERICA

I. (a) Date: December 17, 1941.

(b) Title: The Evolution of the Concept of *Bona Fide* Possession in Roman Law up to the Present Time.

(c) Author: Professor Alberto Montel, a member of the Bar of Turin, Italy, (read *in absentia* by Dr. Gentle Crowley, Professor of Theology at the Holy Name College, Washington, D.C.)

(d) Abstract:

Professor Montel considered usucapion as the basis of the continental law of prescription, and gave a résumé of the law on this subject in various European Codes. He discussed the elements of title and good faith as factors in the evolution of the concept of usucapion in Roman law.

II. (a) Date: January 14, 1942.

(b) Title: The Influence of Savigny's Doctrine of the Genesis of Law on the Development of the Science of Legal History, particularly that of Canon and Roman Law.

(c) Author: Dr. Guido Kisch, internationally noted Roman Law scholar. He has written more than eight books on the history of law and more than two hundred essays on the subject of Roman Law.

(d) Abstract:

Dr. Kisch presented a concise picture of the history of Legal Historical Science and a short discussion of the present state of research in legal history in the United States.

III. (a) Date: February 11, 1942.

(b) Title: The Lecture of Giambattista Vico on Digest 19.5.

(c) Author: Dr. Elio Gianturco, a specialist in the field of the history of the methods of teaching Roman Law, now research assistant at the Library of Congress.

(d) Abstract:

Vico's lecture was delivered in 1723 upon the occasion of a public competition for the primary morning lectureship in law which was open at the University of Naples. He had taught rhetoric there for many years. The text of this lecture has not been found. But there is a passage in Vico's Autobiography, not yet translated into English, which makes possible a reconstruction of the lecture. In this passage Vico described in detail his technique of Romanistic exegesis. Dr. Gianturco discussed some resulting problems in textual hermeneutics and in the history of the methods employed in the teaching of Roman law from the Renaissance to the early 18th century.